163 US 228

RECORD, CASE NO. 15236.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO., ~~871~~. ~~495~~ 204

WONG WING, LEE POY, LEE YON TONG, AND CHAN WAH DONG, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED DECEMBER 24, 1892.

RECORD, CASE NO. 15236.

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1 *Petition for writ of habeas corpus.*

In the circuit court of the United States.

UNITED STATES OF AMERICA,
Eastern district of Michigan, ss:

In re WONG WING, LEE POY, LEE YON TONG, CHAN WAH DONG.

Complaint in habeas corpus.

To the honorable the judges of said court:

Your complainants, Wong Wing alias John Ling, Lee Poy alias Jung Sang, Lee Yon Tong alias Hong Jo, and Chan Wah Dong alias Chin Lee, respectfully represent unto your honor that they are imprisoned and restrained of their liberty by Joseph Nicholson, superintendent of the Detroit house of correction, at the said house of correction, in Detroit, Wayne County, in the State of Michigan.

That the claim or authority by which your complainants are so imprisoned and restrained of their liberty is a mittimus, issued by John Graves, esq., a commissioner of the United States circuit court for said district at Detroit, in said district.

That said imprisonment and restraint of the liberty of your complainants is unlawful, and wholly without warrant or authority of law, and contrary to the Constitution and laws of the United States. That
2 said detention purports to be upon a conviction before said John Graves, esq., United States commissioner, of being unlawfully within the United States under the act of Congress approved May 5th, 1892, entitled "An act to prohibit the coming of Chinese persons into the United States." That said proceedings and conviction before the said Graves, as such commissioner, were wholly without jurisdiction on the part of said commissioner, and were without warrant or authority of law.

Wherefore complainants pray that a writ of habeas corpus may issue to the said Joseph Nicholson, commanding him to forthwith have your complainants before this honorable court and show cause, if any, why they should be further detained and deprived of their liberty.

李王對 專 黃烟陳和改李培

STATE AND EASTERN DISTRICT OF MICHIGAN,
County of Wayne, ss:

Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Dong, the above named petitioners and complainants, whose names are subscribed to the foregoing complaint or petition, being by me sworn, say that the facts set forth in the above and foregoing complaint are true in substance and in fact, as they verily believe.

GEO. L. CANFIELD,
Notary Public, Wayne Co., Mich.

Let a writ of habeas corpus issue on the foregoing petition, returnable Friday, July 22, 1892, at 10 o'clock a. m.

HENRY H. SWAN,
District Judge.

DETROIT, *July* 21, 1892.
Filed July 21, 1892.

WALTER S. HARSHA, *Clerk.*

3 *Writ of habeas corpus.*

The circuit court of the United States for the eastern district of Michigan.

UNITED STATES OF AMERICA.

The President of the United States of America to Joseph Nicholson, superintendent of the Detroit house of correction, greeting:

We command you that you have the bodies of Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong, by you imprisoned and detained as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Wong Wing, Lee Yon Tong, and Chan Wah Diong shall be called or charged in the circuit court of the United States for the eastern district of Michigan, before the judges of said court, at the court room, in the city of Detroit, on Friday, the twenty-second day of July, A. D. 1892, at ten o'clock in the forenoon of said day, to do and receive what shall then and there be considered concerning the said Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Dong.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-first day of July, in the year one thousand eight hundred and ninety-two, and of the Independence of the United States of America the one hundred and seventeenth.

[SEAL.] WALTER S. HARSHA, *Clerk.*

Allowed July 21, 1892.

HENRY H. SWAN,
District Judge.

Filed July 22, 1892.

WALTER S. HARSHA, *Clerk.*

4 *Return of writ served by marshal or Joseph Nicholson, supt.*

EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that I did serve the within writ at Detroit on Joseph Nicholson, superintendent of the Detroit house of correction on the 22nd day of July, 1892, by delivering to him a true copy of this original, with and exhibiting to him the seal of the court impressed thereon.

By WM. VAN BUREN, *U. S. Marshal.*
GEO. A. WINSLOW, *Dep.*

5 *Return of superintendent Detroit house of correction to writ of habeas corpus.*

The circuit court of the United States for the eastern district of Michigan,

UNITED STATES OF AMERICA.

The President of the United States of America to Joseph Nicholson, superintendent of the Detroit house of correction, greeting:

We command you that you have the bodies of Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong shall be called or charged in the circuit court of the United States for the eastern district of Michigan, before the judges of said court, at the court room, in the city of Detroit, on Friday, the twenty-second day of July, A. D. 1892, at ten o'clock in the forenoon of said day, to do and receive what shall then and there be considered concerning the said Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-first day of July, in the year one thousand eight hundred and ninety-two, and of the independence of the United States of America the one hundred and seventeenth.

[SEAL.] WALTER S. HARSHA, *Clerk.*

Allowed July 21, 1892.

HENRY H. SWAN,
District Judge.

6 DETROIT, HOUSE OF CORRECTION, *July* 22, 1892.

I, Joseph Nicholson, superintendent, do hereby certify that I have Jon Ling, Jung Sang, Chin Lee, and Hong Jo, alias respectively Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong, the Chinese persons named in the within writ of habeas corpus, by virtue of a commitment issued by Jno. Graves, a commissioner of the circuit court of the U. S. for the E. dist. of Michigan. A true copy of commitment is hereby attached.

JOSEPH NICHOLSON,
Supt.

Before John Graves, a commissioner of the circuit court of the United States for the eastern district of Michigan.

Whereas Jon Ling, Jung Sang, Chin Lee, and Hong Jo, alias respectively Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong, Chinese persons, have been duly brought before me, said commissioner, by virtue of a warrant issued upon the complaint of T. E. McDonough, deputy collector of customs, for that on the 15th day of July, A. D. 1892, at Detroit, in said district, said Jon Ling, Jung Sang, Chin Lee, and Hong Jo, alias respectively Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong, being Chinese persons, were and are unlawfully within the United States, and not entitled to remain within the same,

under the statute in such case made and provided, and whereas upon an examination duly had before me upon said charge it is found that said Chinese persons above named are unlawfully within the United States.

Now, therefore, the judgment of the commissioner is that the said 4 Chinese persons above named be and are hereby imprisoned at hard
7 labor at and in the Detroit House of Correction for a period of sixty days from and including this date, and that at the expiration of said period of sixty days they be removed from the United States to China.

In testimony whereof I have hereunto set my hand and seal at Detroit in said district on this 20th day of July, A. D. 1892.

[SEAL.] JNO. GRAVES,
U. S. Circuit Court Commr. for the Eastern District of Michigan.

CAPT. NICHOLSON:

Please don't clip their hair and oblige,

JNO. GRAVES,
U. S. Commr.

JULY 22, 1892.
WALTER S. HARSHA, *Clerk.*

8 *Hearing postponed, etc.*

At a session of the circuit court of the United States for the eastern district of Michigan continued and held pursuant to adjournment at the district court room in the city of Detroit, on Friday, the twenty-second day of July, in the year one thousand eight hundred and ninety-two.

Present, the honorable Henry H. Swan, district judge.

In the matter of the petition of Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong for release from the Detroit House of Correction on writ of habeas corpus.

The hearing of this matter is hereby postponed until Monday next at 2:30 p. m.

9 *Hearing further postponed, etc.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court room in the city of Detroit, on Monday the twenty-fifth day of July, in the year one thousand eight hundred and ninety-two.

Present, the honorable Henry H. Swan, district judge.

In the matter of the petition of Wong Wing, Lee Poy, Lee Yong Tong, and Chan Wah Diong for release from the Detroit House of Correction on writ of habeas corpus.

The hearing of this matter is further postponed until to-morrow morning at 10 o'clock.

10 *Argued and submitted.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room in the city of Detroit, on Tuesday the twenty-sixth day of July, in the year one thousand eight hundred and ninety-two.

Present, the honorable Henry H. Swan, district judge.

In the matter of the petition of Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong for release from the Detroit House of Correction on writ of habeas corpus.

In this matter the court hears the arguments of counsel for the respective parties and thereupon said matter is submitted.

11 *Order discharging writ and remanding petitioners.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room in the city of Detroit, on Monday the first day of August, in the year one thousand eight hundred and ninety-two.

Present, the honorable Henry H. Swan, district judge.

In the matter of the petition of Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong for release from Detroit House of Correction on writ of habeas corpus.

In this matter, after due deliberation thereon, it is by the court now ordered that the writ of habeas corpus be discharged and the prisoners remanded to the custody of Mr. Joseph Nicholson, keeper of the Detroit House of Correction to serve their original sentence.

12 *Claim of appeal to U. S. Supreme Court.*

Circuit court of the United States for the eastern district of Michigan.

In the matter of the petition of Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong for writ of habeas corpus.

The above-named petitioners respectfully show that on the 15th day of July, 1892, they were arrested in said district; that they were brought before John Graves, a commissioners of the circuit court of the United States for the eastern district of Michigan, at Detroit, by virtue of a warrant issued upon the complaint of P. E. McDonough, deputy collector of customs, and that subsequently they were committed to and imprisoned in the House of Correction at the city of Detroit in said district, by virtue of a commitment, a copy of which is hereto annexed, marked A. That subsequently, and on the day of July they were brought before said circuit court upon a writ of habeas corpus issued by said court upon a petition, a copy of which is hereby annexed, marked B. That subsequently said cause came on to be heard before said circuit court and was argued by counsel in behalf of your petitioners and by the United States district attorney in behalf of the United States, and that afterwards, on the first day of August, 1892, the said court by its judgment and order discharged said writ and remanded your petitioners to the custody of the superintendent of the House of Correction at Detroit, aforesaid.

13 Yours petitioner' further show that they are aggrieved by the decision of said court and that, as they are advised, the said judgment and order of said court is erroneous in the following among other particulars:

First, because the commitment and imprisonment of your petitioners in said house of correction is unlawful and without warrant of law and contrary to the Constitution and laws of the United States; that the proceed-

ings and conviction of your petitioners before said Graves as such commissioner were wholly without the jurisdiction on the part of said commissioner and without warrant or authority of law; that for these and other reasons appearing upon the face of said proceedings your petitioners feeling themselves aggrieved by the judgment and decision of said circuit court appeal therefrom and from the whole thereof to the Supreme Court of the United States, and they pray that this appeal may be allowed and that the record and proceedings in said cause may be certified to said court according to the statute in such case made and provided and in accordance with the rules and practice of said court and that pending said appeal they may be admitted to bail or enlarged upon recognizance as provided by the rules of said court and in accordance with the statute in such case made and provided.

WONG WING,
LEE POY,
LEE YON TONG,
CHAN WAH DIONG,
By H. D. PAUL, *Atty.*

HARRISON D. PAUL and
FRANK H. CANFIELD,
Attorneys for Petitioners.

14 "A."

Before John Graves, a commissioner of the circuit court of the United States for the eastern district of Michigan.

Whereas Jon Ling, Jung Sang, Chin Lee, and Hong Jo, alias, respectively, Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong, Chinese persons, have been duly brought before me, said commissioner, by virtue of a warrant issued upon the complaint of T. E. McDonough, deputy collector of customs, for that on the 15th day of July, A. D. 1892, at Detroit, in said district, said Jon Ling, Jung Sang, Chin Lee, and Hong Jo, alias, respectively, Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong, being Chinese persons, were and are unlawfully within the United States, and are not entitled to remain within the same under the statute in such case made and provided; and

Whereas, upon examination duly had before me upon said charge, it is found that said Chinese persons above named are unlawfully within the United States:

Now, therefore, the judgment of the commissioner is that the said 4 Chinese persons above named be, and are hereby, imprisoned at hard labor at and in the Detroit House of Correction for a period of sixty days from and including this date, and that at the expiration of said period of sixty days they be removed from the United States to China.

In testimony whereof I have hereunto set my hand and seal at Detroit, in said district, on this 20th day of July, A. D. 1892.

[SEAL.] JOHN GRAVES,
U. S. Circuit Court Commissioner for the Eastern Dist. of Michigan.

Filed August 2, 1892.

WALTER S. HARSHA, *Clerk.*

15 *Order allowing appeal, etc.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court room in the city of Detroit, on Tuesday, the second day of August, in the year one thousand eight hundred and ninety-two.

Present, the honorable Henry H. Swan, district judge.

In the matter of the petition of Wong Wing, Lee Poy, Lee Yong Tong, and Chan Wah Diong for release from the Detroit House of Correction on writ of habeas corpus.

On reading and filing petition of Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong for the allowance of an appeal to the Supreme Court of the United States from the order of this court dated August 1, 1892, discharging the writ and remanding them into custody, it is ordered that said appeal be, and the same is hereby, allowed. And it 's further ordered that each of said petitioners, Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Diong, be admitted to bail pending appeal in the sum of $750.00 each, with two sufficient sureties satisfactory to the clerk, provided that before release on bail each furnish evidence of identity to the satisfaction of the district attorney or his assistant.

16 *Bond of Wong Wing pending appeal.*

UNITED STATES OF AMERICA,
Southern district of New York, ss:

Be it remembered that on this 8th day of September, 1892, before me, Thomas Alexander, one of the commissioners duly appointed by the circuit court of the United States of America for the southern district of New York, in the second circuit, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the provisions of the acts of Congress in that behalf, personally came Morris Isaacs and Thomas Corrigan and severally acknowledged themselves to owe to the United States of America, that is to say, the said Morris Isaacs, of 213 East 87th st., in the city of New York, the sum of seven hundred and fifty dollars, and the said Thomas Corrigan, of 398 Tenth street, in the city of Brooklyn, New York, the sum of seven hundred and fifty dollars, separately to be levied and made on their respective goods and chattels, lands and tenements, to the use of the United States if default should be made in the condition following, to wit :

Whereas Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing, were charged on oath before John Graves, esq., one of said commissioners, duly appointed as aforesaid by the circuit court of the United States for the eastern district of Michigan, with being on the 15th day of July, in the year one thousand eight hundred and ninety-two, Chinese per-
17 sons, and being unlawfully within the United States, and not entitled to remain within the same under the statutes in such case made and provided. And upon such charge being made as aforesaid the said commissioner did issue his warrant in due form of law for the arrest of said Wong Wing.

And whereas the said Wong Wing has been brought before the said commissioner to answer to the said charge, and witnesses have been duly examined in relation to said charge in the presence of said Wong Wing, and upon such examination it appearing to the said commissioner that the offence with which the said Wong Wing stood charged had been committed, and the said Wong Wing was sentenced to be imprisoned at hard labor in the Detroit house of correction for the period of sixty days from and including the 20th day of July, 1892, and after the expiration of said period of sixty days to be removed from the United States to China; and whereas the said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing were afterwards brought before the said circuit court on a writ of habeas corpus to relieve from said imprisonment, and the said circuit court by its order, made on the first day of August, 1892, discharged said writ and remanded the said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing into custody; and whereas said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing have appealed from said order to the Supreme Court of the United States; and whereas the said circuit court has allowed said appeal and has ordered that the said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing be admitted to bail pending said appeal, as appears by the said order of said circuit court, made on the second day of August, 1892:

18 Now, therefore, the condition of this recognizance is such that if the said Wong Wing shall, in case the said order so appealed from be affirmed by the Supreme Court, personally appear at a circuit court of the United States for the eastern district of Michigan, to be holden at the United States court building in the city of Detroit, whenever he may be required, that day, and then and there answer all such matters and things as shall be objected against him, and abide the order of the court and not depart the said court without leave, and shall at all times render himself amenable to the process of the court during the pendency of the action and appeals, and to such as may be issued to enforce the judgment therein, then this recognizance to be void, otherwise to remain in full force and virtue.

M. ISAACS. [SEAL.]
THOS. CORRIGAN. [SEAL.]

Acknowledged before me the the day and year first above written.

[SEAL.] THOMAS ALEXANDER,
Commissioner of the Circuit Court of the United States for the Southner District of N. Y.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Morris Isaacs, of 213 East 87th street, in the city of New York, being duly sworn, deposes and says that he is worth the sum of fifteen hundred dollars over and above all his just debts and liabilities.

M. ISAACS.

Sworn to this 8th day September, A. D. 1892, before me.

THOS. ALEXANDER,
U. S. Commissioner, Southern District of N. Y.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas Corrigan, of 398 Tenth street, in the city of Brooklyn, N. Y., being duly sworn, deposes and says that he is worth the sum of fifteen hundred dollars over and above all his just debts and liabilities.

THOS. CORRIGAN.

Sworn to this 8th day of September, A. D. 1892.

[SEAL.] THOS. ALEXANDER,
U. S. Commissioner, Southern District of New York.

Approved Sept. 12, 1892.

WALTER S. HARSHA, *Clerk.*

Filed Sept. 12, 1892.

WALTER S. HARSHA, *Clerk.*

19 *Bond of Lee Poy, pending appeal.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered that on this 8th day of September, 1892, before me, Thomas Alexander, one the commissioners duly appointed by the circuit court of the United States of America for the southern district of New York, in the second circuit, to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, puruant to the provisions of the acts of Congress in that behalf, personally came Morris Isaacs and Thomas Corrigan and severally acknowledged themselves to owe to the United States of America: that is to say, the said Morris Isaacs, of 213 East 87th st., in the city of New York, the sum of seven hundred and fifty dollars, and the said Thomas Corrigan, of 398 Tenth street in the city of Brooklyn, New York, the sum of seven hundred and fifty dollars, separately to be levied and made on their respective goods and chattels, lands, and tenements, to the use of the said United States if default should be made in the condition following, to wit:

Whereas Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing were charged on oath before John Graves, esq., one of said commissioners duly appointed as aforesaid by the circuit court of the United States for the eastern district of Michigan, with being, on the 15th day of July, in the year one thousand eight hundred and ninety-two, Chinese persons,
20 and being unlawfully within the United States, and not entitled to remain within the same, under the statutes in such case made and provided. And upon such charge being made as aforesaid, the said commissioner did issue his warrant in due form of law for the arrest of said Lee Poy;

And whereas the said Lee Poy has been brought before the said commissioner to answer to the said charge, and witnesses have been duly examined in relation to said charge, in the presence of said Lee Poy, and,

upon such examination, it appearing to the said commissioner that the offence with which the said Lee Poy stood charged has been committed, and the said Lee Poy was sentenced to be imprisoned at hard labor in the Detroit house of correction for the period of sixty days from and including the 30th day of July, 1892, and after the expiration of said period of sixty days to be removed from the United States to China; and whereas the said Lee Poy, Lee Yon Tong, Chon Wah Dong, and Wong Wing were afterwards brought before the said circuit court on a writ of habeas corpus to relieve from said imprisonment, and the said circuit court, by its order made on the first day of August, 1892, discharged said writ and remanded the said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing into custody; and whereas said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing have appealed from said order to the Supreme Court of the United States; and whereas the said circuit court has allowed said appeal and has ordered that the said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing be admitted to bail pending said appeal, as appears by the said order of said circuit court made on the second day of August, 1893:

21 Now, therefore, the condition of this recognizance is such that if the said Lee Poy shall, in case the said order so appealed from be affirmed by the Supreme Court, personally appear at a circuit court of the United States for the eastern district of Michigan, to be holden at the United States court building in the city of Detroit, whenever he may be required, that day and then and there answer all such matters and things as shall be objected against him, and abide the order of the court, and not depart the said court without leave, and shall at all times render himself amenable to the process of the court during the pendency of the action and appeals, and to such as may be issued to enforce the judgment therein, then this recognizance to be void; otherwise to remain in full force and virtue.

M. ISAACS. [SEAL.]
THOS. CORRIGAN. [SEAL.]

Acknowledged before me the day and year first above written.
[SEAL.] THOMAS ALEXANDER,
Commissioner of the Circuit Court of the United States for the Southern District of N. Y.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Morris Isaacs, of 213 East 87th street, in the city of New York, being duly sworn, deposes and says that he is worth the sum of fifteen hundred dollars over and above all his just debts and liabilities.

M. ISAACS.

Sworn to this 8th day of September, A. D. 1892, before me.
THOS. ALEXANDER,
U. S. Commissioner, Southern District of N. Y.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas Corrigan, of 398 Tenth street, in the city of Brooklyn, N. Y., being duly sworn, deposes and says that he is worth the sum of fifteen hundred dollars over and above all his just debts and liabilities.

THOS. CORRIGAN.

Sworn to this 8th day of Sept., A. D. 1892, before me.

[SEAL.] THOS. ALEXANDER,
U. S. Commissioner, Southern District of New York.

Approved Sept. 12, 1892.

WALTER S. HARSHA,
Clerk.

Filed Sept. 12, 1892.

WALTER S. HARSHA,
Clerk.

22 *Bond of Lee Yon Tong pending appeal.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered that on this 8th day of September, 1892, before me, Thomas Alexander, one of the commissioners duly appointed by the circuit court of the United States of America for the southern district of New York, in the second circuit, to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the provisions of the acts of Congress in that behalf, personally came Morris Isaacs and Thomas Corrigan and severally acknowledged themselves to owe to the United States of America—that is to say, the said Morris Isaacs, of 213 East 87th st., in the city of New York, the sum of seven hundred and fifty dollars, and the said Thomas Corrigan, of 398 Tenth street, in the city of Brooklyn, New York, the sum of seven hundred and fifty dollars, separately to be levied and made on their respective goods and chattels, lands, and tenements, to the use of the said United States if default should be made in the condition following, to wit:

Whereas, Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing were charged on oath before John Graves, esq., one of said commissioners duly appointed as aforesaid by the circuit court of the United States for the eastern district of Michigan, with being, on the 15th day of July, in the year one thousand eight hundred and ninety-two, Chinese per-
23 sons, and being unlawfully within the United States, and not entitled to remain within the same, under the statutes in such case made and provided. And upon such charge being made as aforesaid, the said commissioner did issue his warrant in due form of law for the arrest of said Lee Yon Tong;

And whereas the said Lee Yon Tong has been brought before the said commissioner to answer to the said charge, and witnesses have been duly

examined in relation to said charge in the presence of said Lee Yon Tong, and upon such examination it appearing to the said commissioner that the offence with which the said Lee Yon Tong stood charged has been committed, and the said Lee Yon Tong was sentenced to be imprisoned at hard labor in the Detroit house of correction for the period of sixty days from and including the 20th day of July, 1892, and after the expiration of said period of sixty days to be removed from the United States to China; and whereas the said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing were afterwards brought before the said circuit court on a writ of habeas corpus to relieve from said imprisonment, and the said circuit court, by its order made on the first day of August, 1892, discharged said writ and remanded the said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing into custody; and whereas said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing have appealed from said order to the Supreme Court of the United States; and whereas the said circuit court has allowed said appeal and has ordered that the said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing be admitted to bail pending said appeal, as appears by the said order of said circuit court made on the second day of August, 1892,

24 Now, therefore, the condition of this recognizance is such that if the said Lee Yong Tong shall, in case the said order so appealed from be affirmed by the Supreme Court, personally appear at a circuit court of the United States for the eastern district of Michigan, to be holden at the United States court building, in the city of Detroit, whenever he may be required, that day, and then and there answer all such matters and things as shall be objected against him, and abide the order of the court, and not depart the said court without leave, and shall at all times render himself amenable to the process of the court during the pendency of the action and appeals, and to such as may be issued to enforce the judgment therein, then this recognizance to be void, otherwise to remain in full force and virtue.

M. ISAACS. [SEAL.]
THOS. CORRIGAN. [SEAL.]

Acknowledged before me the day and year first above written.
[SEAL.] THOMAS ALEXANDER,
Commissioner of the Circuit Court of the United States for the Southern District of N. Y.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Morris Isaacs, of 213 East 87th street, in the city of New York, being duly sworn, deposes and says that he is worth the sum of fifteen hundred dollars, over and above all his just debts and liabilities.

M. ISAACS.

Sworn to this 8th day of September, A. D. 1892, before me.
THOS. ALEXANDER,
U. S. Commissioner, Southern District of N. Y.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas Corrigan, of 398 Tenth street, in the city of Brooklyn, N. Y., being duly sworn, deposes and says that he is worth the sum of fifteen hundred dollars, over and above all his just debts and liabilities.

THOS. CORRIGAN.

Sworn to this 8th day of Sept., A. D. 1892, before me.

[SEAL.] THOS. ALEXANDER,
U. S. Commissioner, Southern District of New York.

Approved Sept. 12, 1892.

WALTER S. HARSHA,
Clerk.

Filed Sept. 12, 1892.

WALTER S. HARSHA,
Clerk.

25 *Bond of Chan Wah Diong, pending appeal.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered that on this 8th day of September, 1892, before me, Thomas Alexander, one of the commissioners duly appointed by the circuit court of the United States of America for the southern district of New York, in the second circuit, to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes, depending in the courts of the United States pursuant to the provisions of the acts of Congress in that behalf, personally came Morris Isaacs and Thomas Corrigan, and severally acknowledged themselves to owe to the United States of America, that is to say, the said Morris Isaacs, of 213 East 87th st., in the city of New York, the sum of seven hundred and fifty dollars, and the said Thomas Corrigan, of 398 Tenth street, in the city of Brooklyn, New York, the sum of seven hundred and fifty dollars, separately to be levied and made on their respective goods and chattels, lands and tenements, to the use of the said United States if default should be made in the condition following, to wit:

Whereas Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing were charged on oath before John Graves, esq., one of said commissioners duly appointed as aforesaid, by the circuit court of the United States for the eastern district of Michigan, with being on the 15th day of July, in the year one thousand eight hundred and ninety-two, Chinese persons,
26 and being unlawfully within the United States, and not entitled to remain within the same, under the statutes in such case made and provided; and upon such charge being made as aforesaid, the said commissioner did issue his warrant in due form of law for the arrest of said Chah Wah Diong;

And whereas the said Chah Wah Diong has been brought before the said commissioner to answer to the said charge, and witnesses have been

duly examined in relation to said charge, in the presence of said Chah Wah Diong, and upon such examination, it appearing to the said commissioner that the offence with which the said Chan Wah Diong stood charged has been committed, and the said Chan Wah Diong was sentenced to be imprisoned at hard labor in the Detroit House of Correction for the period of sixty days from and including the 20th day of July, 1892, and after the expiration of said period of sixty days to be removed from the United States to China. And whereas the said Lee Poy, Lee Yon Tong, Chah Wah Dong, and Wong Wing were afterwards brought before the said circuit court on a writ of habeas corpus to relieve from said imprisonment, and the said circuit court by its order, made on the first day of August, 1892, discharged said writ and remanded the said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing into custody. And whereas said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing have appealed from said order to the Supreme Court of the United States. And whereas the said circuit court has allowed said appeal and has ordered that the said Lee Poy, Lee Yon Tong, Chan Wah Dong, and Wong Wing be admitted to bail pending said appeal, as appears by the said order of said circuit court, made on the second day of August, 1892:

27 Now, therefore, the condition of this recognizance is such that if the said Chan Wah Dong shall in case the said order so appealed from be affirmed by the Supreme Court, personally appear at a circuit court of the United States for the eastern district of Michigan, to be holden at the United States court building in the city of Detroit, whenever he may be required, that day, and then and there answer all such matters and things as shall be objected against him, and abide the order of the court, and not depart the said court without leave, and shall at all times render himself amenable to the process of the court during the pendency of the action and appeals, and to such as may be issued to enforce the judgment therein, then this recognizance to be void; otherwise to remain in full force and virtue.

M. ISAACS. [SEAL.]
THOS. CORRIGAN. [SEAL.]

Acknowledged before me the day and year first above written.
[SEAL.] THOMAS ALEXANDER,
Commissioner of the Circuit Court of the United States, for the Southern District of N. Y.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Morris Isaacs, of 213 East 87th street, in the city of New York, being duly sworn, deposes and says that he is worth the sum of fifte'n hundred dollars over and above all his just debts and liabilities.

M. ISAACS.

Sworn to this 8th day of September, A. D. 1892, before me.
THOS. ALEXANDER,
U. S. Commissioner, Southern District of N. Y.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas Corrigan, of 398 Tenth street, in the city of Brooklyn, N. Y., being duly sworn, deposes and says that he is worth the sum of fifteen hundred dollars over and above all his just debts and liabilities.

THOS. CORRIGAN.

Sworn to this 8th day of Sept., A. D. 1892, before me.

[SEAL.] THOS. ALEXANDER,
U. S. Commissioner, Southern District of New York.

Approved Sept. 12, 1892.

WALTER S. HARSHA, *Clerk.*

Filed Sept. 12, 1892.

WALTER S. HARSHA, *Clerk.*

28 Supreme Court of the United States.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, on the second Monday in October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the sixth judicial circuit and eastern district of Michigan, wherein Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Dong are appellants and the United States of America is appellee, to show cause, if any there be, why the judgment and decision rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, this second (2d) day of August, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States of America the one hundred and sixteenth.

HENRY H. SWAN,
U. S. District Judge, E. D. of Michigan.

(Indorsed:) Supreme Court of the United States. Wong Wing et al., appellants, vs. The United States, appellee. Citation filed in clerk's office Sept. 1, 1892. Walter S. Harsha, clerk. Frank H. Canfield, Geo. L. Canfield, atty. for appellants. August 22, 1892. Received copy of the within citation. J. W. Finney, Asst. U. S. Atty., E. D. Mich.

29 *Clerk's certificate.*

UNITED STATES OF AMERICA.

The circuit court of the United States for the eastern district of Michigan.

The matter of the petition of Wong Wing, Lee Poy, Lee Yon Tong, and Chan Wah Dong.

I, Walter S. Harsha, clerk of the circuit court of the United States, do hereby certify that the above and foregoing is a true copy of the record

and all proceedings in the above entitled cause, as the same appear on file and of record in my office; that I have compared the same with the originals and they are true and correct transcripts therefrom and of the whole thereof.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at Detroit, this ——— day of ———, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States of America the one hundred and seventeenth.

[SEAL.] ——— ———,
Clerk.

(Indorsed on cover:) Case No. 15236. Lee Poy, Wong Wing, Lee Yon Tong, and Chan Wah Dong, appellants, vs. The United States, E. Michigan C. C. U. S. Term No. 871. Filed December 24, 1892.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1895.

WONG WING, LEE POY,
LEE YON TONG, and
CHAN WAH DONG,
Appellants.

vs.

THE UNITED STATES.

204

BRIEF FOR APPELLANTS.

FRANK H. CANFIELD,
Counsel for Appellants.

FREDERICK W. FIELDING,
Of Counsel.

DETROIT, MICH.:
JOHN BORNMAN & SON, PRINTERS, 12 TO 18 LARNED STREET EAST.
1896.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

WONG WING, LEE POY,
LEE YON TONG, and
CHAN WAH DONG,
Appellants,

vs.

THE UNITED STATES.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

BRIEF FOR APPELLANTS.

This was a proceeding by a writ of habeas corpus on the part of the appellants to be relieved from imprisonment in the Detroit House of Correction.

The return to the writ, which was issued by the Circuit Court for the Eastern District of Michigan, (Rec. 3), shows that the appellants are Chinese persons, and that they were imprisoned under an order or commitment issued by John Graves, Esq., United States Circuit Court Commissioner for said District, by whom said appellants were found to be unlawfully within the United States, and they were therefore sentenced by him to be imprisoned at *hard labor* in the Detroit House of Correction for

a period of sixty days, from and including the date of such commitment, and, at the expiration of said period of sixty days, to be removed from the United States to China. The District Judge, before whom the matter was heard in the court below, ordered that the writ be discharged, and that the prisoners be remanded to the custody of the keeper of the House of Correction to serve out their original sentence, (Rec. 5). From this decision the appellants have appealed to the Supreme Court.

The question involved is whether the appellants were legally imprisoned by virtue of the order or commitment of the Commissioner.

It will be seen that the case presents a different question from the one which was involved in the case of *Fong Yue Ting vs. The United States*, 149 U. S., 698. That case involved the constitutionality of Sec. 6, of the Act of 1892, providing for the deportation of Chinese laborers who were within the United States at the time of the passage of the Act, and who should fail to obtain certificates of residence, or should fail to establish to the satisfaction of the judge before whom they should be brought, that they were unable to procure such certificates and the fact of their residence at the time of the passage of the Act by at least one credible white witness.

The question involved in the *present* case is whether a Chinese person can be lawfully convicted and sentenced to *imprisonment at hard labor* for a definite period by a Commissioner, and without indictment or trial by jury. The question necessarily involves the constitutionality of Sec. 4 of the Act of 1892, which we believe has never been decided by this Court.

In behalf of the appellants we submit :

I.

That Sec. 4 of the Act of 1892, is invalid because it conflicts with the Fifth Amendment of the Constitution, which declares that

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, * * * nor be deprived of life, liberty, or property, without due process of law."

It also conflicts with the Sixth Amendment of the Constitution, which provides that

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

While, as already suggested, this point has not been decided by this Court, it was considered and directly decided in *United States vs. Wong Dep Ken*, 57 Fed., 206, where it is said:

"That the expulsion from this country of a foreigner who came into it contrary to its laws, and who was thereby excluded, is not subjecting him to prosecution or punishment for crime, is clear. In the late case of Fong Yue Ting v. U. S., 149 U. S., 698, the majority of the Supreme Court held that the subsequent expulsion of Chinese persons who came into the country by invitation of our government, is not the prosecution or punishment of such persons for crime committed. A fortiori, the expulsion of such foreigners as enter the country contrary to and in the teeth of our laws is not to prosecute or punish them for crime committed. It results, I think, that the constitutional, statutory, and common law, provisions and rules in respect to criminal prosecutions have no application to the mere expulsion or deportation of such Chinese persons as came here contrary to and in violation of the laws of the United States.

"But it by no means follows that the political right of the government to expel such persons, embraces the right to confine them at hard labor in a penitentiary before deportation. If the imprisonment of a human being at hard labor in a penitentiary is not punishment, it is difficult to understand how anything short of the infliction of the death penalty is. It is not only punishment, but punishment infamous in its character, which, under the provisions of the Constitution of the United States, can only be inflicted upon a person after his due conviction of crime pursuant to the forms and provisions of law."

The learned Judge then quotes at length from *Ex parte Wilson*, 114 U. S., 426, where it was held that imprisonment at hard labor was an infamous punishment. And he also cites *Mackin vs. U. S.*, 117 U. S., 352, where the Court said:

"We cannot doubt that at the present day, imprisonment in a State prison or penitentiary, with or without hard labor, is an infamous punishment."

And he then says (57 Fed. 211):

"Such punishment, as has been said, cannot be inflicted except for crime committed, and after *due* conviction thereof. By subdivision 3, § 2, Art. 3, of the Constitution of the United States, it is declared that 'the trial of all crimes, except in cases of impeachment, shall be by jury.'"

He also quotes the Fifth and Sixth Amendments of the Constitution and says:

"That portion of Section 4 of the Act of May 5, 1892, known as the 'Geary Act,' providing for the imprisonment at hard labor for a period not exceeding one year of any Chinese person, or person of Chinese descent, convicted and adjudged by a commissioner to be not lawfully entitled to be or remain in the United States, is, in my opinion, clearly in conflict with the provisions of the Constitution of the United States above cited."

If this be the correct view of the Act of 1892, then the Court below, in the case at bar, erred in not discharging the appellants.

That the imprisonment provided in Section 4 was intended as a punishment, appears from the words of the statute, especially when read in the light of facts of which the Court must take judicial notice.

Section 2 provides:

"That any Chinese person or person of Chinese descent, when *convicted* and adjudged * * * to be not lawfully entitled to be or remain in the United States, shall be removed from the United States to China, unless he or they shall make it appear to the justice, judge or commissioner before whom he or they are tried, that he or they are subjects or citizens of some other country, in which case, he or they shall be removed from the United States to such country," etc.

Section 4 provides:

"That any such Chinese person, or person of Chinese descent, convicted and adjudged to be not lawfully entitled to be or remain in the United States, shall be imprisoned at hard labor for a period not exceeding one year, and thereafter removed from the United States, as hereinbefore provided."

The effect of these two sections is thus stated in *Fong Yue Ting vs. U. S., 149 U. S., 725.*

"Sections 2–4 concern Chinese 'not lawfully entitled to be or remain in the United States;' and provide that, after trial before a justice, judge or

commissioner, 'a Chinese person, or person of Chinese descent, convicted and adjudged to be not lawfully entitled to be or remain in the United States,' shall be imprisoned at hard labor for not more than a year, and be afterwards removed to China or other country of which he appears to be a citizen or subject."

Thus it appears that these sections provide for arrest and trial, and, in case of conviction, for imprisonment at hard labor for a period not exceeding one year—provisions which can properly apply only to proceedings in a case criminal in its nature. The duration of the imprisonment is, of course, entirely within the discretion of Congress. If it may provide for imprisonment for a year, it may fix the term for any number of years, or for the natural life of the Chinese person convicted of being unlawfully within the country. If Congress can constitutionally provide that an alien who is found by a commissioner to be unlawfully within this country may be punished by the order of such commissioner by imprisonment at hard labor, why may it not also provide that he shall suffer the death penalty under such an order?

Whenever the law provides that imprisonment shall follow a trial and conviction of the offender, it necessarily intends that such imprisonment shall be inflicted as *punishment* for the offense of which the person has been convicted. Imprisonment at hard labor for a definite period, is not only punishment, but it is punishment of an infamous character.

The distinction between the provisions of sections 2-4 and section 6, as the latter has been construed by this court, is apparent.

In *Fong Yue Ting vs. U. S.*, it is said, (728):

"The effect of the provisions of Section 6 of the act of 1892, is that, if a Chinese laborer, after the opportunity afforded him to obtain a certificate of residence within a year, at a convenient place, and without cost, is found without such a certificate, he shall be so far presumed to be not entitled to remain within the United States, that an officer of the customs, or collector of internal revenue, or a marshal, or deputy of either, may arrest him, not

with a view to imprisonment or punishment, or to his immediate deportation without further inquiry, but in order to take him before a judge, for the purpose of a judicial hearing and determination of the only facts which, under the act of Congress, can have a material bearing upon the question whether he shall be sent out of the country, or be permitted to remain." * * * "The proceedings before a United States judge, as provided for in Section 6 of the act of 1892, is in no proper sense a trial and sentence for a crime or offense. It is simply the ascertainment, by appropriate and lawful means, of the fact whether the conditions exist upon which Congress has enacted that an alien of this class may remain within the country. The order of deportation is not a punishment for crime. It is not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the government of the nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend. He has not, therefore, been deprived of life, liberty or property, without due process of law," etc.

But under Sections 2-4 the arrest and subsequent trial there provided, are with a view to the "imprisonment or punishment" of the Chinese person, and therefore proceedings under *those* sections may be held void, although proceedings under Section 6 are held to be valid.

The Fifth Amendment forbids that *any person* "shall be held to answer for a capital or otherwise infamous crime, without the presentment or indictment of a grand jury; * * * nor be deprived of life, liberty, or property without due process of law." All crimes are infamous which are punishable by imprisonment at hard labor. Every violation of law which is punishable by imprisonment at hard labor is an infamous crime.

Under the Fifth and Sixth Amendments no person can be held to answer, or be put upon trial, or convicted, or be subjected to an infamous punishment, unless he has first been indicted by a grand jury, and tried and convicted by an impartial jury of the State and district wherein the offense has been committed. This has been held so often by this Court that it seems unnecessary to cite authorities.

In *Ex parte Wilson, 114 U. S., 417*, the petitioner was confined in the House of Correction at Detroit (the same prison in which these appellants were confined), under a sentence of imprisonment at hard labor, passed by the District Court of the United States for the Eastern District of Arkansas, upon an information filed by the district attorney for that district, and it was held that he was entitled to be discharged upon the ground that he had not been indicted by a grand jury.

The Court say:

"For more than a century, imprisonment at hard labor in the State prison or penitentiary or other similar institution has been considered an infamous punishment in England and America."

And at the close of the opinion it is said:

"Deciding nothing beyond what is required by the facts of the case before us, our judgment is that a crime punishable by imprisonment for a term of years at hard labor is an infamous crime, within the meaning of the Fifth Amendment of the Constitution; and that the District Court, in holding the petitioner to answer for such a crime, and sentencing him to such imprisonment, without indictment or presentment by a grand jury, exceeded its jurisdiction, and he is therefore entitled to be discharged.

In *Mackin vs. U. S., 117 U. S., 348*, it was held that a crime punishable by imprisonment in a State prison or penitentiary, with or without hard labor, is an infamous crime within the provisions of the Fifth Amendment of the Constitution.

The Court say:

"Having regard to the object and terms of the Amendment, as well as to the history of its proposal and adoption, and to the early understanding and practice under it, no person can be held to answer, without presentment or indictment by a grand jury, for any crime for which an infamous punishment may lawfully be imposed by the Court. The test is whether the crime is one for which the statutes authorize the Court to award an infamous punishment, not whether the punishment ultimately awarded is an infamous one; when the accused is in danger of being subjected to an infamous punishment if convicted, he has the right to insist that he shall not be put upon his trial, except on the accusation of a grand jury. The Constitution protecting *everyone* from being prosecuted in a Court of the United States, without the intervention of a grand jury, for any crime which is subject by

law to an infamous punishment, no declaration of Congress is needed to secure, or competent to defeat, the constitutional safeguard."

Parkinson vs. U. S., 121 U. S., 281.
In re Claasen, 140 U. S., 200.

That imprisonment at hard labor under Section 4, was intended as a *punishment*, to be inflicted upon Chinese persons who should be convicted and adjudged to be not lawfully entitled to be and to remain in the United Stae s, and not as a mere incident to their removal from the United States, is also apparent from the fact that the Act provides that they shall be removed to China, or to such other country of which they may be citizens or subjects.

149 U. S., 726.

"Such other country," may be Canada or Mexico, and the removal may be effected at any time without the least delay. The appellants in this case may be citizens of Canada. They were arrested, tried and convicted at Detroit. They could have been deported across the boundary line into Canada immediately the commissioner had pronounced sentence against them. Not more than thirty minutes at the outside would have been required to have transported them from the commissioner's office across the river which separates the Canadian from the American shore. To say that an imprisonment at hard labor for sixty days, or for any period "of not exceeding one year," is to be regarded as an incident to their deportation is absurd. It would be much more correct to say that the deportation was an incident to the imprisonment.

II.

Section 4 of the Act of 1892, is also in conflict with the Thirteenth Amendment of the Constitution which declares that

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Imprisonment at hard labor in a State prison is *servitude* to which no person, under the Constitution, can be subjected, except as a punishment for crime whereof he shall have been duly convicted.

If it be not a *crime* for a Chinese person to be or to remain in the United States, then he cannot be punished by imprisonment at hard labor.

In *Ex parte Wilson, 114 U. S., 417*, the Court said :

"Imprisonment at hard labor, compulsory and unpaid, is in the strongest sense of the words 'involuntary servitude for crime,' spoken of in the Ordinance of 1787, and of the Thirteenth Amendment of the Constitution, by which all other slavery was abolished."

In *2 Story on the Constitution, § 1924*, it is said that this amendment "forbids not merely the slavery heretofore known to our laws, but all kinds of involuntary servitude not imposed in punishment for public offense."

So I submit that if the appellants are not guilty of a crime by reason of being unlawfully within the United States, they cannot be subjected to the involuntary servitude of imprisonment at hard labor "compulsory and unpaid." If, on the other hand, it is to be held that the appellants were guilty of a crime by reason of being unlawfully within the United States, for which they may be punished by imprisonment at hard labor, then it was a crime of an infamous character for which they could not be held to answer except on a presentment or indictment by a grand jury, and for which they were entitled under the Sixth Amendment to a trial by a fair and impartial jury of the State and district in which the offense was committed.

I am aware that the decisions of several of the District and Circuit Judges are, apparently at least, in conflict with a portion of my argument.

In *United States vs. Wong Sing, 51 Fed., 79*, it was held that the provisions of Section 4 of the Act of 1892 that all Chinese persons convicted of being unlawfully in the United States shall be imprisoned at hard labor, was intended to be

applied only in those cases in which the government might be able to secure and produce sufficient evidence to justify a criminal prosecution. It was there said:

"To give proper effect to all the provisions of this Act it is necessary to give it an interpretation authorizing indictments and criminal prosecutions in those cases in which the government may be able to secure and produce sufficient evidence to justify the same, and at the same time preserving the remedy of summary proceedings in all cases in which criminal prosecutions may be, for any reason, impracticable, and requiring that Chinese persons unable to prove their right to remain in the country, but who cannot be convicted upon a criminal charge, shall be sent to their own country, in accordance with the procedure and practice adopted in enforcing the existing laws."

This decision seems to hold that Chinese persons unlawfully within the United States, may be removed therefrom by summary proceedings, such as were upheld by this Court in the case of *Fong Yue Ting;* but that they cannot be punished by imprisonment at hard labor except upon indictment and trial as provided in the Fifth and Sixth Amendments of the Constitution.

In *United States vs. Hing Quong Chow, 53 Fed., 233,* Judge Billings held that the imprisonment provided for in Section 4 is not for the purpose of punishment, but for the detention of the offender until his removal is effected in the manner provided by the Act.

If this view be correct, then there can be no imprisonment except merely for the purpose of detention until the act of deportation can be commenced. Imprisonment at hard labor for a *definite period* not exceeding one year, when the offender can be sent back to the country from which he came, or of which he is a citizen or subject, immediately, is not such imprisonment as is contemplated by the Act, and the appellants are therefore entitled to be discharged.

Such was the decision of Judge Severens in *In re Sing Lee, 54 Fed., 334,* in which he said:

"If the view taken of the Statute of 1892, by Judge Billings, in *U. S. vs. Hing Quong Chow* (in which he holds that it should be construed, not

as creating a criminal offense, but as prescribing merely a method of removal, and requiring certain detention as an incident), is correct,—as I am inclined to think it is,—the sentence in this case, so far as imprisonment is concerned, should have been that the respondent should be imprisoned until he should be deported, but not longer than one year. * * * It is necessary, therefore, to hold that the imprisonment provided for in the Act is not a punishment, but a mere means of detention. The sentence in this case was that the respondent should be imprisoned for twenty days, and then removed, etc. In my opinion the petitioners would be entitled to the writ for the purpose of relief from that portion of the sentence which prescribed a definite term of imprisonment, but that term has expired," etc.

So whether we regard the imprisonment provided for by Section 4 as a punishment criminal and infamous in its character, or whether it is to be considered as "an incident" to the removal, the imprisonment of these appellants at hard labor for the definite period of sixty days, was illegal, and they were entitled to the writ for the purpose of relief from such imprisonment.

III.

The provisions of the Fifth, Sixth and Thirteenth Amendments of the Constitution, apply as well to Chinese persons who are aliens, as to American citizens.

The term *person*, used in the Fifth Amendment, is broad enough to include any and every person within the jurisdiction of the republic. A resident, alien born, is entitled to the same protection under the laws that a citizen is entitled to. He owes obedience to the laws of the country in which he is domiciled, and, as a consequence, he is entitled to the equal protection of those laws.

This has been decided so often that the point does not require argument.

Yick Wo vs. Hopkins, 118 U. S., 369.
Ah Kaw vs. Arman, 5 Sawyer, 552.
Carlisle vs. U. S., 16 Wall, 147.
In re Lee Tong, 18 Fed., 253.
In re Wong Yung Guy, 6 Sawyer, 237.
In re Chow Goo Pooi, 25 Fed., 77.

IV.

Where there is a want of jurisdiction to impose a sentence of imprisonment, and such want of jurisdiction appears on the face of the record, the respondent is entitled to be discharged on a habeas corpus.

In re Snow, 120 U. S., 274.

In this case we submit that the record shows upon its face that the order made by the Commissioner was without jurisdiction on his part, and therefore the Circuit Court erred in refusing to discharge the petitioners.

Such discharge so far as proceedings in the present case are concerned should be absolute. Especially is this so because of the provisions of the Amendatory Act of Congress, approved November 3d, 1893, which provides for an extension of the time in which Chinese laborers may apply for certificates of residence, and for the discontinuance of proceedings pending at the time the Act of 1892 took effect.

If it shall be suggested that the petitioners are still liable to deportation, although their imprisonment was illegal, then we submit that new proceedings to effect such deportation must be instituted.

F. H. CANFIELD,
For Appellants.

F. W. FIELDING,
Of Counsel.

C... Supreme Court, U. S.
APR 8 1896
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

WONG WING, LEE ROY, LEE YON TONG, and CHAN WAH DONG, appellants,
v.
THE UNITED STATES.

No. 204.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

WONG WING, LEE ROY, LEE YON TONG, and Chan Wah Dong, appellants, *v.* THE UNITED STATES. } No. 204.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is an appeal from the circuit court of the United States for the eastern district of Michigan from an order discharging a writ of habeas corpus.

The petition and return showed that appellants were detained at the house of correction in Detroit, Mich., by virtue of a commitment issued July 20, 1892, by a United States commissioner, who adjudged that they were

Chinese persons unlawfully within the United States, and not entitled to remain within the same, and that they be imprisoned at *hard labor* at and in the Detroit house of correction for a period of sixty days from and including the date of commitment, and that at the expiration of said time they be removed from the United States to China.

The sentence to "*hard labor*" was imposed under section 4 of the act of May 5, 1892 (27 Stat., 25), which is as follows:

> That any such Chinese person or person of Chinese descent convicted and adjudged to be not lawfully entitled to be or remain in the United States shall be imprisoned at hard labor for a period of not exceeding one year, and thereafter removed from the United States, as hereinbefore provided.

The jurisdiction of the commissioner is found in section 12 of the act of July 5, 1884 (23 Stat., 115), as follows:

> SEC. 12. That no Chinese person *shall be permitted to enter* the United States *by land* without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel. And any Chinese person *found unlawfully* within the United States shall be caused to be removed therefrom to the country from whence he came, and at the cost of the United States, after being brought before some justice, judge, *or commissioner of a court of the United States and found to be one not lawfully entitled to be or to remain in the United States;* and in all such cases the person who brought or aided in bringing such person to the United States shall be liable to the Government of the United

> States for all necessary expenses incurred in such investigation and removal; and all peace officers of the several States and Territories of the United States are hereby invested with the same authority as a marshal or United States marshal in reference to carrying out the provisions of this act, or the act of which this is amendatory, as a marshal or deputy marshal of the United States, and shall be entitled to like compensation, to be audited and paid by the same officers. And the United States shall pay all costs and charges for the maintenance and return of any Chinese person having the certificate prescribed by law as entitling such Chinese person to come into the United States who may not have been permitted to land from any vessel by reason of any of the provisions of this act.

The treaty and exclusion acts are printed as an appendix to this brief.

POINTS AND ARGUMENT.

I.

Protection under the Constitution.

The ground for reversal relied upon by appellants is that the judgment of the commissioner was void for want of jurisdiction, inasmuch as the statute attempted to clothe him with authority in contravention of the fifth amendment to the Constitution, which provides that—

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public dan-

> ger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

And also of the sixth amendment, which provides that—

> In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

And also of Section I of the thirteenth amendment, which provides that—

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The exclusion acts operate upon two classes—one composed of those who came into the country with its consent and have refused to leave or qualify themselves to remain, and the other of those who have come into the country without the consent of the United States and are remaining in it.

Whether there is any difference in respect of the rights of these two classes may at first blush appear to be a debatable question, but it is insisted for the Government that there can be no essential difference, and that an alien who is commanded to leave if he does not comply with certain conditions, and who is subjected by the exclusion statute to a particular punishment by a particular procedure if he does so remain, can stand on no higher ground than one who comes into the country after such a statute has been passed.

He acquires his residence subject to the *paramount* and *inalienable* right of the sovereign to withdraw its consent. If this consent be withdrawn, coupled with an order to leave, a reasonable time being given therefor, he stands in respect of the right of the sovereign to enforce a penalty against an alien just in the same plight as would one coming in against a prohibition. To hold otherwise is to say he, in a matter involving the public policy of the Government in respect of foreigners and its enforcement, has acquired a vested right, and that the United States have bartered away or alienated a portion of its sovereign power.

If, however, there be a difference, it is contended that, inasmuch as the record does not show to which class these petitioners belonged, it was their duty to set up facts which would show that they, in respect of the punishment inflicted, were not within the jurisdiction of the commissioner.

If the commissioner had jurisdiction to inflict a punishment upon one class and not upon the other it should

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be presumed that he acted within the law, and from the fact of inflicting the punishment in this instance found that appellants were within the class who were subject to such punishment. If the proceeding as to them was illegal, the petition should show in what the illegality consists, and this should be done by stating the facts showing it. (Church on Habeas Corpus, sec. 91.)

The petitioner was at liberty to allege and to prove facts going to show that the court was without jurisdiction. (*In re Cuddy*, 131 U. S., 280.)

The averment in this petition that the commissioner was wholly without jurisdiction was a conclusion of law and not an averment of fact, and it would not overcome the presumption that the law makes in supporting a judgment.

While the commissioner was a court of inferior jurisdiction, and the presumptions would not exist in respect of such court that obtain in regard to the district and circuit courts; nevertheless, it would seem that where the only defendant is the superintendent of the prison, it would be presumed, nothing appearing to the contrary, that the commissioner had found the existence of the facts which were necessary to support his action. There is nothing before the court here but the petition and the commitment.

In *Rex* v. *Rogers* (1 Dowl. & R., 156), where a prisoner was committed by a justice of the peace under a warrant of execution which recited that he had been convicted, etc., upon return to a writ of habeas corpus, it was objected that the warrant of commitment did not

state on its face all the proceedings prescribed by the statute; to which Chief Justice Abbott, speaking for the court, replied:

> We are bound to presume, until the contrary is shown, that there has been a good conviction, and that the magistrate has done everything required of him by law.

And in the conclusion of the opinion he said:

> As we are bound to presume that there was a good conviction before commitment, I think we ought not to discharge this defendant.

All the facts necessary to constitute the offense in summary convictions should be proved, but it is not necessary to recite them all in the commitment. (*People* v. *Gray*, 4 Parker Cr. C., 616; *Bennac* v. *People*, 4 Barb., 31.)

Mr. Cooley, in speaking of the presumptions in respect of the jurisdiction of inferior courts, says that if the jurisdiction depends upon a certain state of facts which must be passed upon by the inferior courts themselves, and in respect to which the decision of the inferior court has been rendered, it must be held final and conclusive in all collateral inquiries, if there was any evidence whatever on which to base it, notwithstanding it may have erred in its conclusions. (Cooley's Constitutional Limitations, 5th ed., 503.)

It was said in argument in behalf of appellants that in habeas corpus cases the return alone could be looked to.

The doctrine in the United States courts is that the return may be controverted, and that all facts material in the case may be shown on the hearing. (Church on Habeas Corpus, sec. 151, note 4, and cases there cited.)

Section 760, Revised Statutes, provides that the return may be traversed and that the petitioner may allege any other facts that may be material in the case, that the return and all suggestions made against it may be amended before or after the same are filed, "so that thereby the material facts may be ascertained."

But the question as to which class petitioners belonged is not doubtful, for conceding that the statement made during the argument by counsel for appellants, that they had come over from Canada, being *dehors* the record, is not binding on them, it is very clear that they belonged to the class forbidden to enter the United States.

The commissioner who convicted them under section 4 of the act of May 5, 1892, had no authority except under section 12 of the act of July 5, 1884, which applied to persons *entering and remaining*, and not those *remaining*, in the United States after a lawful entry.

The first *removal* provision was in the act of May 5, 1892.

By section 6 jurisdiction in such cases was given to a judge and *not* a commissioner.

Besides, persons *who had entered lawfully were given until May 5, 1893*, before they could "be deemed and adjudged to be unlawfully within the United States."

The commissioner in this case acted July 20, 1892.

It is beyond all reason to admit the suggestion, there being nothing whatever in the record, even remotely, warranting it, that he not only usurped the jurisdiction vested exclusively in a judge, but at a time when even a judge could not have exercised it.

There can not be a shadow of a doubt that those persons were Chinese laborers who had unlawfully entered the United States.

In *Yick Wo* v. *Hopkins* (118 U. S., 356, 369), *Fong Yue Ting* v. *United States* (149 U. S., 698, 724), and *Lem Moon Sing* v. *United States* (158 U. S., 538, 547), it was said that Chinese laborers, like all other aliens, are entitled to the safeguards of the Constitution and to the protection of the laws in regard to their rights of person and of property and to their civil and criminal responsibility *so long as they are permitted by the Government to remain in the country.*

None of these cases decided that an alien could sneak or force his way into the United States against their will, and stand under the protection of the Constitution.

In the Yick Wo Case both of the petitioners came by consent, were lawful residents of the United States, were remaining in the country by permission of the Government, and were discriminated against by a municipal ordinance.

All of the petitioners in the Fong Yue Ting case came by consent and were lawful residents of the United States when the act of May 5, 1892, was passed. (149 U. S., 702, 703.)

In this case Mr. Justice Gray said:

> By the law of nations, doubtless, aliens residing in a country with the intention of making it a permanent place of abode acquire, in one sense, a domicile there; and *while they are permitted by the nation to retain such a residence* and domicile are subject to its laws and may invoke its protection against other

nations. This is recognized by those publicists who, as has been seen, maintain in the strongest terms the right of the nation to expel any or all aliens at its pleasure. (Vattel, lib. I., c. 19, sec. 213; 1 Phillimore, c. 18, sec. 321; Mr. Marcy, in Koszta's Case, Wharton's International Law Digest, sec. 198. See also *Lau Ow Bew* v. *United States*, 144 U. S., 47, 62; Merlin, Repertoire de Jurisprudence, Domicile, sec. 13, quoted in the case above cited of In re Adam, 1 Moore, P. C., 460, 472, 473.)

Chinese laborers, therefore, like all other aliens residing in the United States for a shorter or longer time, are entitled, *so long as they are permitted by the Government of the United States to remain in the country, to the safeguards of the Constitution and to the protection of the laws,* in regard to their rights of person and of property, and to their civil and criminal responsibility (p. 724).

The Lem Moon Sing Case was where the person was trying to enter this country. In this case Mr. Justice Harlan said:

> The power of Congress to exclude aliens altogether from the United States, *or to prescribe the terms and conditions upon which they may come to this country, and to have its declared policy in that regard enforced exclusively through executive officers, without judicial intervention,* is settled by our previous adjudications. Is a statute passed in execution of that power any less applicable to an alien who has acquired a commercial domicile within the United States, but who, having voluntarily left the country, although for a temporary purpose, claims the right under some law or treaty to reenter it? We think not. The words of the statute are broad and include "every case" of an alien, at least every

Chinese alien, who at the time of its passage is out of this country, no matter for what reason, and seeks to come back. He is none the less an alien because of his having a commercial domicile in this country. *While he lawfully remains* here he is entitled to the benefit of the guaranties of life, liberty, and property secured by the Constitution to all persons, of whatever race, within the jurisdiction of the United States.

His personal rights when he is in this country and such of his property as is here during his absence are as fully protected by the supreme law of the land as if he were a native or naturalized citizen of the United States. But when he has voluntarily gone from the country and is beyond its jurisdiction, being an alien, *he can not reenter the United States in violation of the will of the Government as expressed in enactments of the law-making power.* He can not, by reason merely of his domicile in the United States for purposes of business, demand that his claim to reenter this country by virtue of some statute or treaty shall be determined ultimately, if not in the first instance, by the courts of the United States, rather than exclusively and finally, in every instance, by executive officers charged by an act of Congress with the duty of executing the will of the political department of the Government in respect of a matter wholly political in its character. He left the country subject to the exercise by Congress of every power it possessed under the Constitution. (158 U. S., 547.)

The question here is one of punishment before deportation, and not detention for the purposes of deportation, as in the case of *Nishimura Ekiu* (142 U. S., 660)

It is different from the question of the right to exclude aliens by summary proceedings through an executive officer, as in *Fong Yue Ting* v. *United States* (149 U. S., 698), and *Lem Moon Sing* v. *United States* (158 U. S., 538).

The question is whether or not an alien in this country is under all circumstances, and especially in a procedure which grows out of a political regulation, entitled to the protection of the Constitution of the United States.

Can a foreigner who comes to this country, *in the face of prohibitory statutes denouncing a penalty and providing for summary proceedings, and against the express will of the sovereign and in defiance of its laws,* acquire a status which will give him a right to rely on constitutional guaranties intended to be acquired only in a lawful way?

Can a foreigner who has come to this country *by consent of the United States, and thereafter is ordered to leave within a certain time, with notice that he will, if he refuses to obey the mandate, be tried by a special tribunal and subjected to a penalty, remain, and demand that he shall be tried in no way and shall be subjected to no punishment other than would be lawful in respect of a citizen of this country?*

Foreigners whom a State *has once admitted unconditionally* into its territories are entitled not only to freedom from injury, but to the execution of justice in respect to their transactions with the subjects of that State.

No country has a right to set, as it were, a snare for foreigners. Therefore, conditions hostile to their interests or different from general usage *must be specified beforehand.* (Phillimore II, ch. 2, sec. 2.)

Vattel ii, c. viii, s. 104, says:

> Dès qu'il les reçoit il s'engage à les 'protégér comme ses propres sujets, à les faire jouir, autant q'il dépond de lui, d' une entière sureté.

But the reception of foreigners is a matter within the abstract competence of each State to accord or refuse, or accord under certain previously specified conditions. (Phillimore III, ch. 3, sec. 35.)

> It is a received maxim of international law that the government of a state may prohibit the entrance of strangers into the country, *and may therefore regulate the conditions under which they shall be allowed to remain in it or may require and compel their departure from it.* (Phillimore's International Law, 2d ed., vol. 1, p. 260.)
>
> It may place what restrictions it thinks fit on the access of foreigners to its coasts or to its interior territories, for mercantile or for any other purposes. * * * A state's perfect right to regulate and restrict the commerce of foreigners with it and their access to its territories extends also to an absolute right to forbid foreign commerce and the access of foreigners altogether. (Creasy's International Law, pp. 196–202.)

To same effect see Woolsey's International Law, section 59.

Aliens may be expelled or rejected by the local sovereign. (Wharton's International Law Digest, II, sec. 206.)

> The sovereign may forbid the entrance into his territory either by foreigners in general or in particular cases or to certain persons, or for certain particular purposes, according as he may think it advantageous to the state.

> There is nothing in all this that does not flow from the right of domain and sovereignty; every one is obliged to pay respect to the prohibition; and whoever dares to violate it incurs the penalty decreed to render it effectual. (Vattel, B. II, ch. 7, sec. 94; Heffter Europaeisches Voelkerrecht, p. 124.)

In the Chinese exclusion cases (130 U. S., 606), in which it was contended that Chinese had acquired a vested right to remain in this country, this court said:

> To preserve its independence and give security against foreign aggression and encroachment is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character or from vast hordes of its people crowding in upon us. The government, possessing the powers which are to be exercised for protection and security, is clothed with authority to determine the occasion on which the powers shall be called forth; and its determination, so far as the subjects affected are concerned, are necessarily conclusive upon all its departments and officers. If, therefore, the Government of the United States, through its legislative department, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be staved because at the time there are no actual hostilities with the nation of which the foreigners are subjects.
>
> The existence of war would render the necessity of the proceeding only more obvious and pressing. The same necessity, in a less pressing degree, may

arise when war does not exist, and the same authority which adjudges the necessity in one case must also determine it in the other. In both cases its determination is conclusive upon the judiciary. If the Government of the country of which the foreigners excluded are subjects is dissatisfied with this action it can make complaint to the executive head of our Government, or resort to any other measure which, in its judgment, its interests or dignity may demand, and there lies its only remedy.

The power of the Government to exclude foreigners from the country whenever, in its judgment, the public interests require such exclusion, has been asserted in repeated instances, and never denied by the executive or legislative Departments. In a communication made in December, 1852, to Mr. A. Dudley Mann, at one time a special agent of the Department of State in Europe, Mr. Everett, then Secretary of State under President Fillmore, writes: "This Government could never give up the right of excluding foreigners whose presence it might deem a source of danger to the United States." "Nor will this Government consider such exclusion of American citizens from Russia necessarily a matter of diplomatic complaint to that country."

In a dispatch to Mr. Fay, our minister to Switzerland, in March, 1856, Mr. Marcy, Secretary of State under President Pierce, writes: "Every society possesses the undoubted right to determine who shall compose its members, and it is exercised by all nations, both in peace and war." "It may always be questionable whether a resort to this power is warranted by the circumstances, or what Department of the Government is empowered to exert it; but there can be no doubt that it is possessed by all nations, and that each may decide for itself when the occa-

sion arises demanding its exercise." In a communication in September, 1869, to Mr. Washburne, our minister to France, Mr. Fish, Secretary of State under President Grant, uses this language: "The control of the people within its limits and the right to expel from its territory persons who are dangerous to the peace of the State are too clearly within the essential attributes of sovereignty to be seriously contested. Strangers visiting or sojourning in a foreign country voluntarily submit themselves to its laws and customs, and the municipal laws of France authorizing the expulsion of strangers are not of such recent date, nor has the exercise of the power by the Government of France been so infrequent, that sojourners within her territory can claim surprise when the power is put in force."

In a communication to Mr. Foster, our minister to Mexico, in July, 1879, Mr. Evarts, Secretary of State under President Hayes, referring to the power vested in the constitution of Mexico to expel objectionable foreigners, says: "The admission that, as that constitution now stands and is interpreted, foreigners who render themselves harmful or objectionable to the General Government must expect to be liable to the exercise of the power adverted to, even in time of peace, remains, and no good reason is seen for departing from that conclusion now. But, while there may be no expedient basis on which to found objection, on principle and in advance of a special case thereunder to the constitutional right thus asserted by Mexico, yet the manner of carrying out such asserted right may be highly objectionable. You would be fully justified in making earnest remonstrances should a citizen of the United States be expelled from Mexican territory without just steps to assure the grounds of such expulsion

and in bringing the fact to the immediate knowledge of the Department." In a communication to Mr. W. J. Stillman, under date of August 3, 1882, Mr. Frelinghuysen, Secretary of State under President Arthur, writes: "This Government can not contest the right of foreign Governments to exclude, on police or other grounds, American citizens from their shores." (Wharton's Int. Law Dig., sec. 206.)

The exclusion of paupers, criminals, and persons afflicted with incurable diseases, for which statutes have been passed, is only an application of the same power to particular classes of persons whose presence is deemed injurious or a source of danger to the country. As applied to them, there has never been any question as to the power to exclude them. The power is constantly exercised; its existence is involved in the right of self-preservation. As to paupers, it makes no difference by whose aid they are brought to the country. As Mr. Fish, when Secretary of State, wrote, in a communication under date of December 26, 1872, to Mr. James Moulding, of Liverpool: "The Government of the United States is not willing and will not consent to receive the pauper class of any community who may be sent or may be assisted in their immigration at the expense of Government or of municipal authorities." As to criminals, the power of exclusion has always been exercised, even in the absence of any statute on the subject. In a dispatch to Mr. Cramer, our minister to Switzerland, in December, 1881, Mr. Blaine, Secretary of State under President Arthur, writes: "While under the Constitution and the laws this country is open to the honest and industrious immigrant, it has no room outside of its prisons or almshouses for depraved and incorrigible criminals or hopelessly dependent paupers who may have become

a pest or burden, or both, to their own country." (Wharton's Int. Law Dig., *supra*.)

The power of exclusion of foreigners being an incident of sovereignty belonging to the Government of the United States, as a part of those sovereign powers delegated by the Constitution, the right to its exercise at any time when, in the judgment of the Government, the interests of the country require it, can not be granted away or restrained on behalf of anyone. The powers of government are delegated in trust to the United States, and are incapable of transfer to any other parties. They can not be abandoned or surrendered, nor can their exercise be hampered, when needed for the public good, by any considerations of private interest. The exercise of these public trusts is not the subject of barter or contract. Whatever license, therefore, Chinese laborers may have obtained previous to the act of October 1, 1888, to return to the United States after their departure, is held at the will of the Government, revocable at any time at its pleasure (pp. 606–609).

Thus this court has declared:

1. The United States are a nation.

2. They, *as an incident of sovereignty, in the exercise of the right of self-preservation, regardless of whether there be actual hostilities*, have the right to exclude foreigners, fix the terms upon which they may enter or remain in this country, and remove them after they have, by permission, entered and acquired a domicile.

3. This right can not be delegated, nor granted away, nor abandoned, nor surrendered, nor be the subject of barter or contract, nor be hampered, nor restrained on behalf of anyone.

4. Whatever license any foreigner may have obtained to return to the United States is held at the will of the Government, revocable at any time at its pleasure.

5. This is a political question, and under the Constitution of the United States, its determination is entrusted exclusively to the legislative department, and its conclusions are necessarily binding upon the judiciary and all of the departments and officers of the United States.

6. In applying these principles it has decided that a Chinaman may be arrested who attempts to come into this country, tried without jury by a collector of revenue, and sent away, without any right of habeas corpus or to have any interference in his behalf by the courts, and this notwithstanding he may have formerly been in the United States and have, by its consent, acquired a domicile and property which, at the time of exclusion, was in the United States, and may have been, in fact, of the class entitled by law to return to the United States. (*In re* Lem Moon Sing, 158 U. S., 538.)

It is now insisted that Congress, in exercising this political right of a sovereign, which is unlimited and can not be questioned by any foreign power except by appeal to arms, is cribbed, cabined, and confined in imposing punishment as an accessory to effectuate its will by the limitations of a Constitution which was not made nor intended for all humanity, nor to operate as a restriction on the Government to protect foreigners against its action in political matters, but was ordained and established by the people of the United States for their own benefit and the benefit of those lawfully within their Territory.

The Constitution of the United States was not framed to protect foreigners against the action of the United States in dealing with political questions.

In dealing with other nations and their subjects the people of the United States are not trammeled by restrictions established for their own safety within, but have as full and supreme a power as any other nation, and exercise it under the *jus gentium* with no accountability other than that which every independent Government must give, under a judgment quickened by an enlightened civilization, rendered in the forum of nations where—

"The common sense of most shall hold a fretful realm in awe."

It is not to be supposed that Congress will, in carrying out its policy, inflict unusual, cruel, or unnecessary punishment, nor that it will in this shock the sentiments of humanity any more than it would in carrying on a war.

It may be said that if Congress has the right to say a foreigner who comes or remains in this country unlawfully shall, without indictment and a trial by jury, be sentenced to hard labor for a short term, it may, by virtue of the same principle which authorizes this, go to extremes and sentence to imprisonment for life or even inflict capital punishment. It is sometimes a true test of the existence of a power to carry the principle upon which it is claimed, to its last analysis, and show, by demonstrating a conflict between the power claimed and a higher existing power that the principle contended for is vicious. Such was the reasoning where a power to tax was denied, because it carried with it a power to destroy an agency of a paramount government. To make

this conclusion sound in any case there must be a higher power or principle.

The right of Congress, in this case, is unlimited, and there is no paramount power for it to infringe upon, unless it be the Constitution, and this can only be by this court holding that aliens can, *against the will of the United States*, acquire or hold the Constitutional guaranties to personal liberty and rights of property. If they can do so, the right must rest upon some principle of law, and not upon the degree of punishment that Congress may undertake to inflict. To hold otherwise is to say that Congress shall be restrained, not by virtue of any rights aliens have or can acquire, but by virtue of the inhibition of the Constitution acting upon Congress to restrain the infliction of that character of punishment and because of its character, without regard to the protection which the object of it has a right to claim. The Constitution, therefore, in this respect would be an instrument not framed to guarantee personal rights as such, but to prevent Congress from committing an enormity.

In such case the parties affected could waive nothing and the proceeding would be restrained because of its intrinsic wrong.

The degree of punishment or the manner of its infliction can not be the true test in this case. Suppose it should be held, under the influence of this argument that the power of Congress is limited so that it can not inflict the punishment in question in this case, what would be then the condition of the United States if this principle be carried to its extreme logical conclusion? Let us sup-

pose a striking but by no means impossible condition that may arise. The total population of China is over 400,000,000. The total number of those holding religions other than that of the Christian is over 1,000,000,000. If one Chinaman out of every hundred or one of all religions other than Christian combined out of every thousand should conclude to come to America as an Eldorado of wealth and a New Atlantis of ideal political and personal liberty, we would have in the one instance 4,000,000 and in the other instance 10,000,000 candidates for trial by jury, with a right of appeal to the Supreme Court, if Congress should undertake to deter their coming or get rid of those who had come by imposing confinement at hard labor.

And this state of affairs can exist without our Government declaring war or having any occasion to declare war against the several nations from which these persons come, for these nations might themselves forbid the emigration and exert themselves as strenuously to keep their subjects in as the United States might be doing to keep them out. It is quite manifest that if the United States shall be trammeled in such a crisis by their Constitution the country would not only be impoverished by the expense of deporting the vast hordes who would come into the country vested with such sanctity, or at least endowed with the capability of acquiring it as soon as they got in and determined to remain in, but the courts, and especially this court, would be surrendered to foreigners.

The policy of excluding Chinese is for the legislative department of the Government to determine, and it has

spoken, and has sought to make its legislation effectual by imposing a penalty for an infraction of the exclusion act, and it has provided for a special procedure in such cases.

It is a great burden to the Government to maintain this policy, not only in preventing illegal entry, but in detecting and deporting those who evade surveillance at the ports of entry and the border.

It is rather a pleasant experience than otherwise for a Chinaman to come to the United States at a small expense and then be sent back to China at the cost of the United States, he being also fed and lodged as a guest of the Government. The punishment of confinement at hard labor is not for a crime, but as a deterrent and in aid of the enforcement of the policy of the Government within its clear right.

If they be sent back without any punishment, it is a game at which they win in any event. If they get in and escape detection the law is circumvented. If they are caught it is a pleasant episode in their lives.

If the United States must maintain a cordon to carry out its policy, and then if it is evaded can not punish without all of the delay and expense incident to the trial by jury and due process of law which an enlightened civilization has evolved for the protection of its own citizens and invited aliens, the Government is onerated with a burden which no other country would for a moment tolerate.

It is no denial of any right and no injustice to say to foreigners, "You must not come to our country, or you must not remain in it, and if you do, then you will be

punished, and in a specified way." It violates no law of humanity and is in no sense harsh. It is a prompt, economical, and practical way of carrying out the policy which the United States have an unquestionable right to adopt.

II.

Infamous punishment. Criminal prosecution. Involuntary servitude.

If the offense and punishment in this case do not come within the meaning of "infamous crime," or of "criminal prosecution," or of "involuntary servitude," as these terms are used in the fifth and sixth and thirteenth amendments, then petitioners can not say that the proceedings were not "due process of law," or that they were entitled to be tried by "an impartial jury," or that they were otherwise unconstitutional.

Section 4 of the act of May 5, 1892 (27 Stat. L., 25), provides that the person convicted "*shall be imprisoned at hard labor* for a period of not exceeding one year."

Imprisonment in a penitentiary for a term of years and imprisonment at hard labor have been held to be punishments inflicted for infamous crimes.

Ex parte Wilson, 114 U. S., 426.
Mackin v. *United States*, 117 U. S., 352.
In re Mills, 135 U. S., 263.
In re Claasen, 140 U. S., 205.

It has *not* been decided by this court that in all cases where the punishment may be confinement at hard labor the crime is infamous.

If such were the case, it would follow that thousands of American citizens are yearly deprived of their liberty, and are made to undergo punishment for infamous crimes without indictment, or presentment, or trial by jury.

Vagrants and disorderly persons are daily, upon summary proceedings, sentenced to confinement at hard labor for a term less than a term of years.

The constitutionality of these statutes has been repeatedly assailed without effect, notwithstanding the guaranty of a speedy trial by an impartial jury.

In the following cases laws providing for imprisonment without jury trial were sustained:

State v. *Glenn*, 54 Md., 572.
People v. *McCarthy*, 45 How. Pr., 97.
People v. *Warner*, 45 How. Pr., 97.
Duffy v. *People*, 6 Hill, 75.
People v. *Phillips*, 1 Parker, Cr. C., 95.
State v. *Maxey*, 1 McMull., 501.
Byers & Davis v. *Commonwealth*, 42 Pa. St., 89.
Murphy v. *People*, 2 Cowen, 815.
McGear v. *Woodruff*, 33 N. J. L., 213.
Wharton's Crim. Pl. and Pr., 8th ed., 1880, sec. 80.
Church on Habeas Corpus, 2d ed., p. 423.
Shafer v. *Mumma*, 17 Md., 331.
People v. *Forbes*, 4 Parker, C. R., 611.

Notwithstanding the provision that no freeman shall be condemned "but by lawful judgment of his peers, or by the law of the land," summary jurisdiction in England has been conferred on justices of the peace for conviction of police offenses.

Burn's Justices, tit. Conviction.
Bac. Abr., tit. Justice of the Peace.

In England, upon summary proceedings, idle, vagrant, and disorderly persons are imprisoned at hard labor.

5 Geo. IV, c. 83.
1 and 2 Vic., c. 38.
31 and 32 Vic., c. 52.
32 and 33 Vic., c. 99.
11 and 12 Vic., 241, c. 43.
42 and 43 Vic., 236, c. 49.

The courts have held that these guaranties refer to such *crimes* and accusations as have, by the regular course of the law and the established modes of procedure, been the subject of trial by jury, and that they do not embrace every species of accusation involving either criminal or penal consequences. As said by Justice Alvey in *State* v. *Glenn* (54 Md., 572):

> If the State has no power to provide by law for the summary trial and conviction of vagrant and disorderly persons by justices of the peace, it would clearly follow that no such power could be granted to be exercised under charters or ordinances of municipal corporations, and the consequence would be that for the violation of all mere police ordinances prescribing penalties for their infraction it would be the right of the party accused to insist upon indictment and trial by jury. Such a mode of proceeding, if it were practicable, has never been contended for, nor could such contention be maintained for a moment (p. 606).

As said in *Shafer* v. *Mumma* (17 Md., 331, 336):

> We regard it as but a part of *the police* power as contradistinguished from the regular *judiciary* powers of the State. From time immemorial a distinction has been observed between the two, both in England and this country.

The courts of New York have treated them in the nature of police regulations to *prevent crime and public charges and burdens* other than of the nature of ordinary criminal laws prohibiting and punishing an act or acts as a crime or crimes. (*People* v. *Forbes*, 4 Parker Cr. C., 611; 11 Abb. Pr., 52.)

In Virginia no jury is allowed for the offense of Sabbath breaking. (*Ex Parte Morx*, 86 Va., 40.)

For contempt there may be imprisonment, and without trial by jury.

Ex Parte Terry, 128 U. S., 289.
Ex Parte Savin, 131 U. S., 267.
Ex Parte Cuddy, 131 U. S., 280.
Ellenbecker v. *Plymouth County*, 134 U. S., 31.

Also, as a means of enforcing payment of taxes. (*Palmer* v. *McMahon*, 133 U. S., 660.)

In *Lawton* v. *Steele* (152 U. S., 133) it was held that under the police power fish nets might be destroyed without giving the owner any trial.

In *Callan* v. *Wilson* (127 U. S., 540) it was held that the word "crime" in the Constitution applied to conspiracy, and so the police court of the District of Columbia could not have jurisdiction of such offense; but in this case the court fully recognized that at common law, and in this country, persons guilty of minor offenses can be deprived of liberty without a trial by jury, and that as to minor offenses, and offenses at common law not triable by jury, the guaranty does not apply.

This is a new offense, and for police protection, and so is not within the common-law cases which were triable

by jury, and the Constitution did not intend to apply to them.

It is a political offense by a foreigner, and in a matter falling within the police power of the United States. It seems hardly necessary to argue that the thirteenth amendment can have no application to this case, but in any event the petitioners "have been duly convicted," if Congress had the right to pass the law, and so the involuntary servitude falls within the provisions of the amendment.

III.

If the order for imprisonment was void, that for deportation was not, and the two are severable, and the petitioners should not be turned loose, but should be remanded for deportation, and without confinement at hard labor.

Where a portion of the sentence is valid and part void, the void portion will not vitiate the valid portion.

United States v. *Pridgeon*, 153 U. S., 48, 63.
Church on Habeas Corpus, sections 372, 373.

It is no objection in this case to say that the valid portion of the sentence was to begin only at a time after the invalid portion had been carried out.

The time has long elapsed now covering the period of the sentence to imprisonment, and, therefore, if that portion was void, it cuts no figure, for the time when they were to have been deported has long since been reached.

J. M. Dickinson,
Assistant Attorney-General.

APPENDIX.

Treaty between the United States and China, concerning immigration. Concluded November 17, 1880; ratification advised by the Senate May 5, 1881; ratified by the President May 9, 1881; ratifications exchanged July 19, 1881; proclaimed October 5, 1881.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Treaty between the United States of America and China, for the modification of the existing treaties between the two countries, by providing for the future regulation of Chinese immigration into the United States, was concluded and signed at Peking in the English and Chinese languages, on the seventeenth day of November in the year of our Lord one thousand eight hundred and eighty, the original of the English text of which Treaty is word for word as follows:

Whereas, in the eighth year of Hsien Feng, Anno Domini 1858, a treaty of peace and friendship was concluded between the United States of America and China, and to which were added, in the seventh year of Tung Chih, Anno Domini 1868, certain supplementary articles to the advantage of both parties, which supplementary articles were to be perpetually observed and obeyed:—and

Whereas the Government of the United States, because of the constantly increasing immigration of Chinese labor-

ers to the territory of the United States, and the embarrassments consequent upon such immigration, now desires to negotiate a modification of the existing Treaties which shall not be in direct contravention of their spirit:—

Now, therefore, the President of the United States of America has appointed James B. Angell, of Michigan, John F. Swift, of California, and William Henry Trescot, of South Carolina as his Commissioners Plenipotentiary; and His Imperial Majesty, the Emperor of China, has appointed Pao Chün, a member of His Imperial Majesty's Privy Council, and Superintendent of the Board of Civil Office; and Li Hungtsao, a member of His Imperial Majesty's Privy Council, as his Commissioners Plenipotentiary; and the said Commissioners Plenipotentiary, having conjointly examined their full powers, and having discussed the points of possible modification in existing Treaties, have agreed upon the following articles in modification.

ARTICLE I.

Whenever in the opinion of the Government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country or of any locality within the territory thereof, the Government of China agrees that the Government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations. Legislation taken in regard to Chinese laborers will be of such a character only as is necessary to enforce the regulation, limitation, or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse.

ARTICLE II.

Chinese subjects, whether proceeding to the United States as teachers, students, merchants or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation.

ARTICLE III.

If Chinese laborers, or Chinese of any other class, now either permanently or temporarily residing in the territory of the United States, meet with ill treatment at the hands of any other persons, the Government of the United States will exert all its power to devise measures for their protection and to secure to them the same rights, privileges, immunities, and exemptions as may be enjoyed by the citizens or subjects of the most favored nation, and to which they are entitled by treaty.

ARTICLE IV.

The high contracting Powers having agreed upon the foregoing articles, whenever the Government of the United States shall adopt legislative measures in accordance therewith, such measures will be communicated to the Government of China. If the measures as enacted are found to work hardship upon the subjects of China, the Chinese Minister at Washington may bring the matter to the notice of the Secretary of State of the United States, who will consider the subject with him; and the Chinese Foreign Office may also bring the matter to the notice of the United States Minister at Peking and consider the subject with him, to the end that mutual and unqualified benefit may result.

In faith whereof the respective Plenipotentiaries have signed and sealed the foregoing at Peking, in English and Chinese being three originals of each text of even tenor and date, the ratifications of which shall be exchanged at Peking within one year from date of its execution.

Done at Peking, this seventeenth day of November, in the year of our Lord, 1880. Kuanghsü, sixth year, tenth moon, fifteenth day.

JAMES B. ANGELL.	[SEAL.]
JOHN F. SWIFT.	[SEAL.]
WM. HENRY TRESCOT.	[SEAL.]
PAO CHÜN.	[SEAL.]
LI HUNGTSAO.	[SEAL.]

And whereas the said Treaty has been duly ratified on both parts and the respective ratifications were exchanged at Peking on the 19th day of July 1881:

Now, therefore, be it known that I, Chester A. Arthur, President of the United States of America, have caused the said Treaty to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in Washington this fifth day of October in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and sixth.

[SEAL.] CHESTER A. ARTHUR.

By the President:

JAMES G. BLAINE,
Secretary of State.

Supplemental treaty between the United States and China, concerning commercial intercourse and judicial procedure. Concluded November 17, 1880; ratification advised by the Senate, May 5, 1881; ratified by the President, May 9, 1881; ratifications exchanged, July 19, 1881; proclaimed October 5, 1881.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a supplemental treaty between the United States of America and China, for supplying certain points of incompleteness in the existing treaties between the two governments in the matter of commercial intercourse and of judicial procedure, was concluded and signed at Peking, in the English and Chinese languages, on the seventeenth day of November, in the year of our Lord one thousand eight hundred and eighty, the original of the English text of which treaty is word for word as follows:

The President of the United States of America and His Imperial Majesty the Emperor of China, because of certain points of incompleteness in the existing treaties between the two governments, have named as their commissioners plenipotentiary, that is to say:

The President of the United States, James B. Angell of Michigan, John F. Swift of California, and William Henry Trescot of South Carolina;

His Imperial Majesty, the Emperor of China, Pao Chün, a member of His Imperial Majesty's privy council and superintendent of the board of civil office, and Li Hungtsao, a member of His Imperial Majesty's privy

council, who have agreed upon and concluded the following additional articles:

ARTICLE I.

The Governments of the United States and China, recognizing the benefits of their past commercial relations, and in order still further to promote such relations between the citizens and subjects of the two powers, mutually agree to give the most careful and favorable attention to the representations of either as to such special extension of commercial intercourse as either may desire.

ARTICLE II.

The Governments of China and of the United States mutually agree and undertake that Chinese subjects shall not be permitted to import opium into any of the ports of the United States; and citizens of the United States shall not be permitted to import opium into any of the open ports of China; to transport it from one open port to any other open port; or to buy and sell opium in any of the open ports of China. This absolute prohibition, which extends to vessels owned by the citizens or subjects of either power, to foreign vessels employed by them, or to vessels owned by the citizens or subjects of either power and employed by other persons for the transportation of opium, shall be enforced by appropriate legislation on the part of China and the United States; and the benefits of the favored nation clause in existing treaties shall not be claimed by the citizens or subjects of either power as against the provisions of this article.

ARTICLE III.

His Imperial Majesty the Emperor of China hereby promises and agrees that no other kind or higher rate of

tonnage dues, or duties for imports or exports, or coastwise trade shall be imposed or levied in the open ports of China upon vessels wholly belonging to citizens of the United States; or upon the produce, manufactures or merchandise imported in the same from the United States; or from any foreign country; or upon the produce, manufactures, or merchandise exported in the same to the United States or to any foreign country; or transported in the same from one open port of China to another, than are imposed or levied on vessels or cargoes of any other nation or on those of Chinese subjects.

The United States hereby promise and agree that no other kind or higher rate of tonnage dues or duties for imports shall be imposed or levied in the ports of the United States upon vessels wholly belonging to the subjects of His Imperial Majesty and coming either directly or by way of any foreign port, from any of the ports of China which are open to foreign trade, to the ports of the United States; or returning therefrom either directly or by way of any foreign port, to any of the open ports of China; or upon the produce, manufactures or merchandise imported in the same from China or from any foreign country, than are imposed or levied on vessels of other nations which make no discrimination against the United States in tonnage dues or duties on imports, exports, or coastwise trade; or than are imposed or levied on vessels and cargoes of citizens of the United States.

Article IV.

When controversies arise in the Chinese Empire between citizens of the United States and subjects of His Imperial Majesty, which need to be examined and decided by the public officers of the two nations, it is agreed between the Governments of the United States and China that such cases shall be tried by the proper official of the nationality of the defendant. The properly authorized official of the plaintiff's nationality shall be freely per-

mitted to attend the trial and shall be treated with the courtesy due to his position. He shall be granted all proper facilities for watching the proceedings in the interests of justice. If he so desires, he shall have the right to present, to examine, and to cross-examine witnesses. If he is dissatisfied with the proceedings, he shall be permitted to protest against them in detail. The law administered will be the law of the nationality of the officer trying the case.

In faith whereof the respective plenipotentiaries have signed and sealed the foregoing at Peking in English and Chinese, being three originals of each text, of even tenor and date, the ratifications of which shall be exchanged at Peking within one year from the date of its execution.

Done at Peking this seventeenth day of November, in the year of our Lord, 1880, Kuanghsü, sixth year, tenth moon, fifteenth day.

JAMES B. ANGELL.	[SEAL.]
JOHN F. SWIFT.	[SEAL.]
WM. HENRY TRESCOT.	[SEAL.]
PAO CHÜN.	[SEAL.]
LI HUNGTSAO.	[SEAL.]

And whereas the said treaty has been duly ratified on both parts and the respective ratifications were exchanged at Peking on the 19th day of July 1881:

Now, therefore, be it known that I, Chester A. Arthur, President of the United States of America, have caused the said Treaty to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof:

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in Washington this fifth day of October, in the year of our Lord one thousand eight hundred and eighty-

one, and of the Independence of the United States, the one hundred and sixth.

[SEAL.] CHESTER A. ARTHUR.

By the President:
JAMES G. BLAINE,
Secretary of State.

(22 Stat. L., 826–830.)

CHAP. 126.—An act to execute certain treaty stipulations relating to Chinese.

Whereas, in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the expiration of ninety days next after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby, suspended; and during such suspension it shall not be lawful for any Chinese laborer to come, or, having so come after the expiration of said ninety days, to remain within the United States.

SEC. 2. That the master of any vessel who shall knowingly bring within the United States on such vessel, and land or permit to be landed, any Chinese laborer, from any foreign port or place, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars for each and every such Chinese laborer so brought, and may be also imprisoned for a term not exceeding one year.

SEC. 3. That the two foregoing sections shall not apply to Chinese laborers who were in the United States on

the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of this act, and who shall produce to such master before going on board such vessel, and shall produce to the collector of the port in the United States at which such vessel shall arrive, the evidence hereinafter in this act required of his being one of the laborers in this section mentioned; nor shall the two foregoing sections apply to the case of any master whose vessel, being bound to a port not within the United States, shall come within the jurisdiction of the United States by reason of being in distress or in stress of weather, or touching at any port of the United States on its voyage to any foreign port or place: *Provided*, That all Chinese laborers brought on such vessel shall depart with the vessel on leaving port.

SEC. 4. That for the purpose of properly identifying Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of this act, and in order to furnish them with the proper evidence of their right to go from and come to the United States of their free will and accord, as provided by the treaty between the United States and China dated November seventeenth, eighteen hundred and eighty, the collector of customs of the district from which any such Chinese laborer shall depart from the United States shall, in person or by deputy, go on board each vessel having on board any such Chinese laborer and cleared or about to sail from his district for a foreign port, and on such vessel make a list of all such Chinese laborers, which shall be entered in registry-books to be kept for that purpose, in which shall be stated the name, age, occupation, last place of residence, physical marks or peculiarities, and all facts necessary for the identification of each of such Chinese

laborers, which books shall be safely kept in the custom-house; and every such Chinese laborer so departing from the United States shall be entitled to, and shall receive, free of any charge or cost upon application therefor, from the collector or his deputy, at the time such list is taken, a certificate, signed by the collector or his deputy and attested by his seal of office, in such form as the Secretary of the Treasury shall prescribe, which certificate shall contain a statement of the name, age, occupation, last place of residence, personal description, and facts of identification of the Chinese laborer to whom the certificate is issued, corresponding with the said list and registry in all particulars. In case any Chinese laborer after having received such certificate shall leave such vessel before her departure he shall deliver his certificate to the master of the vessel, and if such Chinese laborer shall fail to return to such vessel before her departure from port the certificate shall be delivered by the master to the collector of customs for cancellation. The certificate herein provided for shall entitle the Chinese laborer to whom the same is issued to return to and re-enter the United States upon producing and delivering the same to the collector of customs of the district at which such Chinese laborer shall seek to re-enter; and upon delivery of such certificate by such Chinese laborer to the collector of customs at the time of re-entry in the United States, said collector shall cause the same to be filed in the custom-house and duly canceled.

SEC. 5. That any Chinese laborer mentioned in section four of this act being in the United States, and desiring to depart from the United States by land, shall have the right to demand and receive, free of charge or cost, a certificate of identification similar to that provided for in section four of this act to be issued to such Chinese laborers as may desire to leave the United States by water; and it is hereby made the duty of the collector of

customs of the district next adjoining the foreign country to which said Chinese laborer desires to go to issue such certificate, free of charge or cost, upon application by such Chinese laborer, and to enter the same upon registry-books to be kept by him for the purpose, as provided for in section four of this act.

SEC. 6. That in order to the faithful execution of articles one and two of the treaty in this act before mentioned, every Chinese person other than a laborer who may be entitled by said treaty and this act to come within the United States, and who shall be about to come to the United States, shall be identified as so entitled by the Chinese Government in each case, such identity to be evidenced by a certificate issued under the authority of said government, which certificate shall be in the English language or (if not in the English language) accompanied by a translation into English, stating such right to come, and which certificate shall state the name, title, or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, and place of residence in China of the person to whom the certificate is issued and that such person is entitled conformably to the treaty in this act mentioned to come within the United States. Such certificate shall be prima-facie evidence of the fact set forth therein, and shall be produced to the collector of customs, or his deputy, of the port in the district in the United States at which the person named therein shall arrive.

SEC. 7. That any person who shall knowingly and falsely alter or substitute any name for the name written in such certificate or forge any such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in any such certificate, shall be deemed guilty of a misdemeanor; and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars, and imprisoned in a penitentiary for a term of not more than five years.

SEC. 8. That the master of any vessel arriving in the United States from any foreign port or place shall, at the same time he delivers a manifest of the cargo, and if there be no cargo, then at the time of making a report of the entry of the vessel pursuant to law, in addition to the other matter required to be reported, and before landing, or permitting to land, any Chinese passengers, deliver and report to the collector of customs of the district in which such vessel shall have arrived a separate list of all Chinese passengers taken on board his vessel at any foreign port or place, and all such passengers on board the vessel at that time. Such list shall show the names of such passengers (and if accredited officers of the Chinese Government traveling on the business of that government, or their servants, with a note of such facts), and the names and other particulars, as shown by their respective certificates; and such list shall be sworn to by the master in the manner required by law in relation to the manifest of the cargo. Any willful refusal or neglect of any such master to comply with the provisions of this section shall incur the same penalties and forfeiture as are provided for a refusal or neglect to report and deliver a manifest of the cargo.

SEC. 9. That before any Chinese passengers are landed from any such vessel, the collector, or his deputy, shall proceed to examine such passengers, comparing the certificates with the list and with the passengers; and no passenger shall be allowed to land in the United States from such vessel in violation of law.

SEC. 10. That every vessel whose master shall knowingly violate any of the provisions of this act shall be deemed forfeited to the United States, and shall be liable to seizure and condemnation in any district of the United States into which such vessel may enter or in which she may be found.

SEC. 11. That any person who shall knowingly bring into or cause to be brought into the United States by land, or who shall knowingly aid or abet the same, or aid or abet the landing in the United States from any vessel of any Chinese person not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined in a sum not exceeding one thousand dollars, and imprisoned for a term not exceeding one year.

SEC. 12. That no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel. And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, by direction of the President of the United States, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or remain in the United States.

SEC. 13. That this act shall not apply to diplomatic and other officers of the Chinese Government traveling upon the business of that government, whose credentials shall be taken as equivalent to the certificate in this act mentioned, and shall exempt them and their body and household servants from the provisions of this act as to other Chinese persons.

SEC. 14. That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

SEC. 15. That the words "Chinese laborers", wherever used in this act, shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining.

Approved, May 6, 1882.

(22 Stat. L., 58–61.)

CHAP. 220.—An act to amend an act entitled "An act to execute certain treaty stipulations relating to Chinese approved May sixth eighteen hundred and eighty-two."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of the act entitled "An act to execute certain treaty stipulations relating to Chinese" approved May sixth eighteen hundred and eighty-two, is hereby amended so as to read as follows:

Whereas in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof; Therefore

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby, suspended, and during such suspension it shall not be lawful for any Chinese laborer to come from any foreign port or place, or having so come to remain within the United States,"

Section two of said act is hereby amended so as to read as follows:

"SEC. 2. That the master of any vessel who shall knowingly bring within the United States on such vessel, and land, or attempt to land, or permit to be landed any Chinese laborer, from any foreign port or place, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not more than five hundred dollars for each and evry such Chinese laborer so brought, and may also be imprisoned for a term not exceeding one year."

Section three of said act is hereby amended so as to read as follows:

SEC. 3. That the two foregoing sections shall not apply to Chinese laborers who were in the United States on

the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of the act to which this act is amendatory, nor shall said sections apply to Chinese laborers, who shall produce to such master before going on board such vessel, and shall produce to the collector of the port in the United States at which such vessel shall arrive, the evidence hereinafter in this act required of his being one of the laborers in this section mentioned; nor shall the two foregoing sections apply to the case of any master whose vessel, being bound to a port not within the United States, shall come within the jurisdiction of the United States by reason of being in distress or in stress of weather, or touching at any port of the United States on its voyage to any foreign port or place: *Provided:* That all Chinese laborers brought on such vessel shall not be permitted to land except in case of absolute necessity, and must depart with the vessel on leaving port."

Section four of said act is hereby amended so as to read as follows:

"SEC. 4. That for the purpose of properly identifying Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of the act to which this act is amendatory, and in order to furnish them with the proper evidence of their right to go from and come to the United States as provided by the said act and the treaty between the United States and China dated November seventeenth, eighteen hundred and eighty, the collector of customs of the district from which any such Chinese laborer shall depart from the United States shall, in person or by deputy, go on board each vessel having on board any such Chinese laborer, and cleared or about to sail from

his district for a foreign port, and on such vessel make a list of all such Chinese laborers, which shall be entered in registry-books, to be kept for that purpose in which shall be stated the individual, family, and tribal name in full, the age, occupation, when and where followed, last place of residence, physical marks or peculiarities, and all facts necessary for the identification of each of such Chinese laborers, which books shall be safely kept in the custom-house; and evry such Chinese laborer so departing from the United States shall be entitled to and shall receive, free of any charge or cost upon application therefor, from the collector or his deputy, in the name of said collector and attested by said collector's seal of office, at the time such list is taken, a certificate, signed by the collector or his deputy and attested by his seal of office, in such form as the Secretary of the Treasury shall prescribe, which certificate shall contain a statement of the individual, family, and tribal name in full, age, occupation, when and where followed, of the Chinese laborer to whom the certificate is issued, corresponding with the said list and registry in all particulars. In case any Chinese laborer, after having received such certificate, shall leave such vessel before her departure, he shall deliver his certificate to the master of the vessel; and if such Chinese laborer shall fail to return to such vessel before her departure from port, the certificate shall be delivered by the master to the collector of customs for cancellation. The certificate herein provided for shall entitle the Chinese laborer to whom the same is issued to to return to and re-enter the United States upon producing and delivering the same to the collector of customs of the district at which such Chinese laborer shall seek to re-enter, and said certificate shall be the only evidence permissible to establish his right of re-entry; and upon delivering of such certificate by such Chinese laborer to the collector of customs at the time of re-entry in the

United States, said collector shall cause the same to be filed in the custom-house and duly canceled."

Section six of said act is hereby amended so as to read as follows:

SEC. 6. That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign Government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government, which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family, and tribal name in full, title or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the United States. If the person so applying for a certificate shall be a merchant, said certificate shall, in addition to above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid: *Provided*, That nothing in this act nor in said treaty shall be construed as embracing within the meaning of the word 'merchant,' hucksters, peddlers, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation. If the certificate be sought for the purpose of travel for curiosity, it shall also state whether the applicant intends to pass through or travel within the United States, together with his financial standing in the country

from which such certificate is desired. The certificate provided for in this act, and the identity of the person named therein shall, before such person goes on board any vessel to proceed to the United States, be vised by the indorsement of the diplomatic representatives of the United States in the foreign country from which said certificate issues, or of the consular representative of the United States at the port or place from which the person named in the certificate is about to depart; and such diplomatic representative or consular representative whose indorsement is so required is hereby empowered, and it shall be his duty, before indorsing such certificate as aforesaid, to examine into the truth of the statements set forth in said certificate, and if he shall find upon examination that said or any of the statements therein contained are untrue it shall be his duty to refuse to indorse the same. Such certificate vised as aforesaid shall be prima facie evidence of the facts set forth therein, and shall be produced to the collector of customs of the port in the district in the United States at which the person named therein shall arrive, and afterward produced to the proper authorities of the United States whenever lawfully demanded, and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein stated disproved by the United States authorities."

Section eight of said act is hereby amended so as to read as follows:

SEC. 8. That the master of any vessel arriving in the United States from any foreign port or place shall, at the same time he delivers a manifest of the cargo, and if there be no cargo, then at the time of making a report of the entry of the vessel pursuant to law, in addition to the other matter required to be reported, and before landing, or permitting to land, any Chinese passengers,

deliver and report to the collector of customs of the district in which such vessels shall have arrived a separate list of all Chinese passengers taken on board his vessel at any foreign port or place, and all such passengers on board the vessel at that time. Such list shall show the names of such passengers (and if accredited officers of the Chinese or of any other foreign Government, traveling on the business of that Government, or their servants, with a note of such facts), and the names and other particulars as shown by their respective certificates; and such list shall be sworn to by the master in the manner required by law in relation to the manifest of the cargo. Any refusal or wilful neglect of any such master to comply with the provisions of this section shall incur the same penalties and forfeiture as are provided for a refusal or neglect to report and deliver a manifest of the cargo."

Section ten of said act is hereby amended so as to read as follows:

SEC. 10. That every vessel whose master shall knowingly violate any of the provisions of this act shall be deemed forfeited to the United States, and shall be liable to seizure and condemnation in any district of the United States into which such vessel may enter or in which she may be found."

Section eleven of said act is hereby amended so as to read as follows:

"Sec. 11. That any person who shall knowingly bring into or cause to be brought into the United States by land, or who shall aid or abet the same, or aid or abet the landing in the United States from any vessel, of any Chinese person not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall on conviction thereof, be fined in a sum not exceeding one thousand Dollars, and imprisoned for a term not exceeding one year

Section twelve of said act is hereby amended so as to read as follows."

"SEC 12 That no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel. And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or to remain in the United States; and in all such cases the person who brought or aided in bringing such person to the United States shall be liable to the Government of the United States for all necessary expenses incurred in such investigation and removal; and all peace officers of the several States and Territories of the United States are hereby invested with the same authority as a marshal or United States marshal in reference to carrying out the provisions of this act or the act of which this is amendatory, as a marshal or deputy marshal of the United States, and shall be entitled to like compensation to be audited and paid by the same officers. And the United States shall pay all costs and charges for the maintenance and return of any Chinese person having the certificate prescribed by law as entitling such Chinese person to come into the United States who may not have been permitted to land from any vessel by reason of any of the provisions of this act."

Section thirteen of said act is hereby amended so as to read as follows

SEC 13 That this act shall not apply to diplomatic and other officers of the Chinese or other Governments traveling upon the business of that Government, whose credentials shall be taken as equivalent to the certificate in this act mentioned, and shall exempt them and their body and household servants from the provisions of this act as to other Chinese persons"

Section fifteen of said act is hereby amended so as to read as follows

"SEC 15 That the provisions of this act shall apply to all subjects of China and Chinese, whether subjects of China or any other foreign power; and the words Chinese laborers, wherever used in this act shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining

SEC 16 That any violation of any of the provisions of this act, or of the act of which this is amendatory, the punishment of which is not otherwise herein provided for, shall be deemed a misdemeanor, and shall be punishable by fine not exceeding one thousand dollars, or by imprisonment for not more than one year, or both such fine and imprisonment

SEC 17 That nothing contained in this act shall be construed to affect any prosecution or other proceeding criminal or civil, begun under the act of which this amendatory; but such prosecution or other proceeding, criminal or civil, shall proceed as if this act had not been passed

Approved, July 5, 1884.

(23 Stat. L., 115–118.)

Another act was passed on the 13th day of September, 1888. (25 Stat. L., 476–479.)

This act, however, did not go into effect, because the treaty referred to in the first section was not ratified.

CHAP. 60. An act to prohibit the coming of Chinese persons into the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all laws now in force prohibiting and regulating the coming into this country of Chinese persons and persons of Chinese descent are hereby continued in force for a period of ten years from the passage of this act.

SEC. 2. That any Chinese person or person of Chinese descent, when convicted and adjudged under any of said laws to be not lawfully entitled to be or remain in the United States, shall be removed from the United States to China, unless he or they shall make it appear to the justice, judge, or commissioner before whom he or they are tried that he or they are subjects or citizens of some other country, in which case he or they shall be removed from the United States to such country: *Provided*, That in any case where such other country of which such Chinese person shall claim to be a citizen or subject shall demand any tax as a condition of the removal of such person to that country, he or she shall be removed to China.

SEC. 3. That any Chinese person or person of Chinese descent arrested under the provisions of this act or the acts hereby extended shall be adjudged to be unlawfully within the United States unless such person shall establish, by affirmative proof, to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States.

SEC. 4. That any such Chinese person or person of Chinese descent convicted and adjudged to be not lawfully entitled to be or remain in the United States shall be imprisoned at hard labor for a period of not exceeding one year and thereafter removed from the United States, as hereinbefore provided.

SEC. 5. That after the passage of this act on an application to any judge or court of the United States in the first instance for a writ of habeas corpus, by a Chinese person seeking to land in the United States, to whom that privilege has thus been denied, no bail shall be allowed, and such application shall be heard and determined promptly without unnecessary delay.

SEC. 6. And it shall be the duty of all Chinese laborers within the limits of the United States, at the time of

the passage of this act, and who are entitled to remain in the United States, to apply to the collector of internal revenue of their respective districts, within one year after the passage of this act, for a certificate of residence, and any Chinese laborer, within the limits of the United States, who shall neglect, fail, or refuse to comply with the provisions of this act, or who, after one year from the passage hereof, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested, by any United States customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States as hereinbefore provided, unless he shall establish clearly to the satisfaction of said judge, that by reason of accident, sickness or other unavoidable cause, he has been unable to procure his certificate, and to the satisfaction of the court, and by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act; and if upon the hearing, it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost. Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases, the cost of said arrest and trial shall be in the discretion of the court. And any Chinese person other than a Chinese laborer, having a right to be and remain in the United States, desiring such certificate as evidence of such right may apply for and receive the same without charge.

SEC. 7. That immediately after the passage of this act, the Secretary of the Treasury shall make such rules and regulations as may be necessary for the efficient execu-

tion of this act, and shall prescribe the necessary forms and furnish the necessary blanks to enable collectors of internal revenue to issue the certificates required hereby, and make such provisions that certificates may be procured in localities convenient to the applicants, such certificates shall be issued without charge to the applicant, and shall contain the name, age, local residence and occupation of the applicant, and such other description of the applicant as shall be prescribed by the Secretary of the Treasury, and a duplicate thereof shall be filed in the office of the collector of internal revenue for the district within which such Chinaman makes application.

SEC. 8. That any person who shall knowingly and falsely alter or substitute any name for the name written in such certificate or forge such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in such certificate, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars or imprisoned in the penitentiary for a term of not more than five years.

SEC. 9. The Secretary of the Treasury may authorize the payment of such compensation in the nature of fees to the collectors of internal revenue, for services performed under the provisions of this act in addition to salaries now allowed by law, as he shall deem necessary, not exceeding the sum of one dollar for each certificate issued.

Approved May 5, 1892.
(27 Stat. L., 25.)

CHAP. 14.—An Act To amend an act entitled "An act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That Section six of an act entitled "An act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two, is hereby amended so as to read as follows:

"SEC. 6. And it shall be the duty of all Chinese laborers within the limits of the United States who were entitled to remain in the United States before the passage of the act to which this is an amendment to apply to the collector of internal revenue of their respective districts within six months after the passage of this act for a certificate of residence; and any Chinese laborer within the limits of the United States who shall neglect, fail, or refuse to comply with the provisions of this act and the act to which this is an amendment, or who, after the expiration of said six months, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any United States customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States, as provided in this act and in the act to which this is an amendment, unless he shall establish clearly to the satisfaction of said judge that by reason of accident, sickness, or other unavoidable cause he has been unable to procure his certificate, and to the satisfaction of said United States judge, and by at least one credible witness other than Chinese, that he was a resident of the United States on the fifth of May, eighteen hundred and ninety-two; and if, upon the hearing, it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost. Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained and judgment suspended a reasonable time to enable him to procure a

duplicate from the officer granting it, and in such cases the cost of said arrest and trial shall be in the discretion of the court; and any Chinese person, other than a Chinese laborer, having a right to be and remain in the United States, desiring such certificate as evidence of such right, may apply for and receive the same without charge; and that no proceedings for a violation of the provisions of said section six of said act of May fifth, eighteen hundred and ninety-two, as originally enacted, shall hereafter be instituted, and that all proceedings for said violation now pending are hereby discontinued": *Provided*, That no Chinese person heretofore convicted in any court of the States or Territories or of the United States of a felony shall be permitted to register under the provisions of this act; but all such persons who are now subject to deportation for failure or refusal to comply with the act to which this is an amendment shall be deported from the United States as in said act and in this act provided, upon any appropriate proceedings now pending or which may be hereafter instituted.

SEC. 2. The words "laborer" or "laborers," wherever used in this act, or in the act to which this is an amendment, shall be construed to mean both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

The term "merchant," as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.

Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing.

Such order of deportation shall be executed by the United States Marshal of the district within which such order is made, and he shall execute the same with all convenient dispatch; and pending the execution of such order such Chinese person shall remain in the custody of the United States Marshal, and shall not be admitted to bail.

The certificate herein provided for shall contain the photograph of the applicant, together with his name local residence and occupation, and a copy of such certificate, with a duplicate of such photograph attached, shall be filed in the office of the United States Collector of Internal Revenue of the district in which such Chinaman makes application.

Such photographs in duplicate shall be furnished by each applicant in such form as may be prescribed by the Secretary of the Treasury.

Approved, November 3, 1893.

(28 Stat. L., 7, 8.)

THE NEW YORK SINGER

New Family Sewing Machine



STYLE No. 1.

No. 1. Ornamented Machine, with Black Walnut Table and Small Drawer.

Time Price, $45.00. Cash Price, $35.00.

No. 2. Same as Above, with Addition of Paneled Box Cover Veneered.

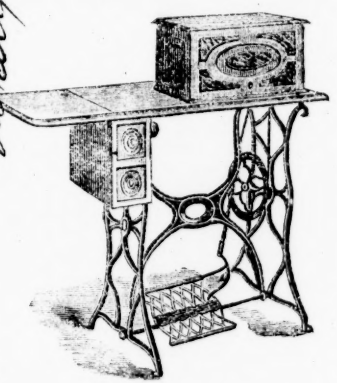
Time Price, $50.00. Cash Price, $40.00.

All we ask is a fair trial of our Machines. Use your own eyes and make your own tests and we are willing to abide your judgment, and will take our chances with any Machine in the world. But *never* allow a competing agent to touch any Machine but his own, for it's but a second's work for him to put a Machine out of order and so it won't sew unless you know how to put it back again. If they keep hands off and can make you believe our Machine is a poor one they are welcome to the $10 or $20 extra you pay them.

Defendant's Exhibit "Y"
Sworn & Subscribed
before me this 11th day
of May A.D. 1876
Notary Public

THE NEW YORK SINGER

New Family Sewing Machine



STYLE No. 3.

No. 3. Highly Ornamented Machine, with Drop Leaf Table, Veneered Paneled Box Cover, and Case of Two Drawers with Locks. This is the most popular style. We sell ten of these to one of all the others.

Time Price, $55.00. Cash Price, $45.00.

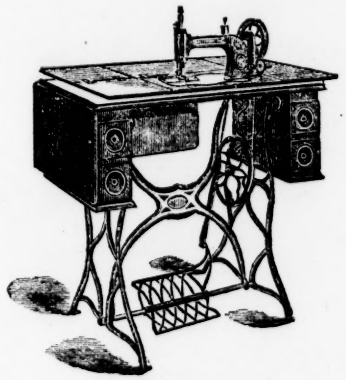
No. 4. Same as Above, with Addition of Case of Two Drawers at Right End of Table.

Time Price $60.00. Cash Price, $50.00.

To say that only one firm can make good Singers is the same as saying that only one firm can make good hats, or good shoes, or good nails, or good sugar. And yet the Singer Company says such foolish things, and finds some people who believe it, or at least, pay $20.00 for a trade mark worth less than one cent.

THE NEW YORK SINGER

New Family Sewing Machine



STYLE No. 6.

No. 5. Extra Ornamented Machine, with the well-known Folding Cover, (not illustrated).

Time Price, $60.00. Cash Price, $50.00.

No. 6. Extra Ornamented Machine, with Drop Leaf Table, Folding Cover, and Case of Two Drawers at each end of Table, as shown in above Cut.

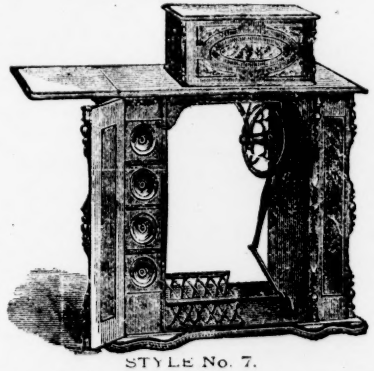
Time Price, $70.00. Cash Price, $60.00.

We place our Singers before you on their merits, and claim that our Machine equals any in every way, and that our trade mark is as good as the Singer Company's, and worth as much.

Since their monopoly is gone the Singer Company has scared some people into paying from $10 to $20 extra for a little piece of brass called their "Trade Mark"; just as if that made a Machine good. Be your own judge. Don't be swindled by "cheap talk."

THE NEW YORK SINGER

New Family Sewing Machine



STYLE No. 7.

No. 7. Extra Ornamented Machine, on Three-Quarter Cabinet Case, Finely Polished and Finished with Veneers, Cover Veneered Paneled, Four Drawers on Side. (The cut above shows it except that the doors are not now put on).

Time Price, $75. Cash Price, $65.

No. 8. Same as Above, but with Folding Cover, Highly Finished.

Time Price, $80. Cash Price, $70.

No. 9. Extra Ornamented Machine, on Oiled Walnut Cabinet Case, with Veneered Panels and Veneered Panel Cover.

Time Price, $80. Cash Price, $70.

No. 10. Same as Above, but with Folding Cover Highly Finished.

Time Price, $85. Cash Price, $75.

U.S. Circuit Court
N. Dist. Illinois
Singer Mfg Co
v
June Mfg Co
In Chancery
fraud.
Defendant's
Exhibit
"Complainant's
Advertisement 1879."
Philip C. Lampert
Notary Public

ALL FORMER YEARS OUTDONE!!!

356,432 Genuine Singer Sewing Machines Sold in 1878,

BEING

73,720 More than in any previous year!!

☞ **SPECIAL NOTICE.** Many abuses have grown up under the old system of selling sewing machines through "MIDDLE-MEN," whose cupidity has often led to misrepresentation and fraud.

For the protection of the public and ourselves we have *abandoned this whole pernicious system.* We have abolished the "middle-man" and sell *directly through our own salaried agents* whom we are able to control.

We can thus give to EVERY PURCHASER of a Genuine Singer Sewing Machine, the guarantee of a company of 25 years standing, employing *forty thousand men*, that any machine sold by a "Singer" agent is exactly what it is represented

The difference between such a guarantee, and the guarantee of a canvasser, representing unknown—irresponsible concerns, is too marked to require comment.

A GRAND GOLD MEDAL was awarded to the "SINGER" at the Paris Exposition, 1878. ☞ No other "Grand Prize" than a Gold Medal was awarded to Sewing Machines.

SOME VERY HARD NUTS TO CRACK:

☞ 1

Companies have sprung up in every part of the Union for making an "Imitation Singer machine."

Why are not similar companies formed for making Imitations of other Sewing Machines?

The public will draw its own inference.

☞ 2

The Singer has taken the FIRST PRIZE over ALL competitors more than TWO HUNDRED TIMES. **Why?**

After the Chicago Fire, the Relief Committee undertook to furnish sewing machines to the needy women of that city. Applicants were permitted to choose from six different kinds of machines. 2,994 applicants were furnished with machines; 2,427 chose Singer Machines, and 517 distributed their choice among the five other kinds of machines! These girls were to EARN THEIR OWN LIVING on these machines. *Why did they take Singers?*

☞ 3

THE PEOPLE'S AWARD TO THE "SINGER."

The people bought Singer Machines as follows:

1870,	127,833	Singer	Machines
1871,	181,260	"	"
1872,	219,758	"	"
1873,	232,444	"	"
1874,	241,679	"	"
1875,	249,852	"	"
1876,	262,316	"	"
1877,	282,812	"	"
1878,	356,432	"	"

Sales of 1878 over Sales of 1870, 228,599 Machines. A Three-fold Increase!

THE SINGER MANUFACTURING CO.,

Principal Office, 34 Union Square, New York.

The Singer Manufacturing Company has 1,500 Subordinate Offices in the United States and Canada, and 3,000 Offices in the Old World and South America.

JOHNSTON TUKER-MARKER, THE JOHNSTON RUFFLER.

Beware of Bogus Agents and Spurious Machines!!

U.S. Circuit Court
N. Dist. Illinois
Singer Mfg. Co.
v.
June Mfg. Co.
In Chancery
Defendant's Exhibit - Complainant's Advertisement 1878.
Philip B. Sampert
Notary Public

THE SINGER MANUFACTURING CO'S
NEW FAMILY SEWING MACHINE

NOW SELLING AT THE

GREAT REDUCTION OF $30 LESS THAN FORMER PRICE.

☞ THE BEST IN THE WORLD! ☜

The "SURVIVAL OF THE FITTEST" is illustrated in the records of the Sewing Machine Market, from 1871 to 1876. In 1871 The Singer Manufacturing Company had 24 Competitors whose total annual sales were 424,834 machines. In 1876, 18 Competitors had gone out of business; the TOTAL ANNUAL SALES of the SURVIVORS had fallen off 121 217 machines, and the Annual Sales of the Singer's leading competitor had fallen off 19,529 machines.

Meanwhile the sales of the SINGER MACHINE INCREASED FROM 181,260 TO 262,316 MACHINES, and even this enormous number was, despite the "hard times," still further INCREASED IN 1877 TO

282,812 MACHINES.

THE BEST ALWAYS WINS IN THE LONG RUN!



BUY ONLY THE GENUINE! BEWARE OF COUNTERFEITS!

We submit to any candid reader, that a Machine whose sales steadily increase through years of adversity and unparalleled depression in business, while the sales of every competitor fall off heavily year by year,

MUST BE THE BEST MACHINE.

No SINGER MACHINE is genuine without our Trade Mark (given above) stamped on the arm of the Machine.

☞ MACHINES SOLD ON THE LEASE OR INSTALLMENT PLAN.

THE SINGER MANUFACTURING CO.,

Principal Office, 34 Union Square, New York.

5

The Singer Manufacturing Co npany,

HAVING INITIATED THE GENERAL REDUCTION OF PRICES IN SEWING MACHINES AND P TS,

DESIRES TO CALL THE ATTENTION OF THE PUBLIC TO THE FOL WING FACTS.

Since 1850, when I. M. Singer produced the first sewing machine which was thoroughly successful a to the practical results, and, with his associates, laid the foundation of our present popularity, we have perfected an organization and secu d facilities for the production, distribution, and sale, of machines which cannot be APPROACHED by any competitor.

This enables us to offer to the public our machines, PROVEN BY THE DISINTERESTED VERDICT OF OVER 2,000,000 PURCHASERS TO BE THE BEST, SIMPLEST, AND MOST PRACTICAL SEWING MACHINE IN THE WORLD, AT THE LOWEST POSSIBLE PRICE; GUARANTEEING CONTINUED SUPERIORITY IN MATERIAL, AND PERFECTION IN WORKMANSHIP. While the vast amount of capital invested in the business enables us to,

CONTINUE THE LEASE OR INSTALLMENT PLAN.

under which the *lessee*, by small monthly payments, can in the space of from 8 to 12 months become the OWNER of one of our unrivalled family machines *with all the latest improvements*, in any of the more popular styles of cabinet work.

REMEMBER

THAT WE ARE PERMANENTLY ESTABLISHED, and can *always* be relied on not only to supply machines promptly to any required extent, but in case of accident, to repair at small expense any machine manufactured by us and to duplicate any part which may be lost or broken.

THAT WE ARE REPRESENTED EVERY WHERE, and purchasers of our machines in any part of the world can always procure FROM THE AUTHORIZED AGENTS OF THE COMPANY, Singer Machines with all the latest improvements, and also *genuine* duplicate parts, accessories and attachments.

THAT WE USE ONLY THE BEST MATERIALS, and possessing *unequaled* facilities for manufacture can therefore *guarantee* SUPERIOR QUALITY AND WORKMANSHIP in *everything* produced by us.

Our best guarantee of perfect reliability is the record of 27 years constantly increasing success, during which time we have made and sold over 2,000,000 machines, (our annual sales now surpassing a quarter of a million,) while in the same period, scores of other sewing machines have been placed on the market, nearly all of which are now worthless, as the makers cannot be found nor the worn or broken parts duplicated. The Singer Manufacturing Company has fairly earned the reputation of taking care of the interests of its customers, and will continue to deserve it.

IMPORTANT ANNOUNCEMENT.

We are also prepared to supply Repairers and Dealers in Sewing Machine Supplies with GENUINE PARTS AND ACCESORIES for our machines—quality guaranteed.

AT LOWER PRICES THAN BOGUS PARTS HAVE EVER BEEN OFFERED.

Orders will be filled at any of our principal branch offices.

At our Factory in Elizabethport, N. J., we can easily produce one thousand (1,000) COMPLETE MACHINES PER DAY, and our Glasgow (Scotland) Factory turns out six hundred (600) DAILY, while our extensive works at South Bend, Ind., enable us fully to meet the enormous demand for cabinet work created by this production. Therefore, as can easily be seen, our resources and facilities are such that

NO ONE CAN COMPETE WITH US IN PRICE

EXCEPT by offering a WORTHLESS ARTICLE, inferior in quailty and construction.

TO AVOID WORTHLESS "BOGUS" MACHINES OR PARTS, notice that every *Singer* machine bears our patented *Trade Mark*. and the words "*The Singer Manufacturing Co.*," on the arm.

AND PURCHASE ONLY FROM OUR AUTHORIZED AGENTS.

Principal Office 34 Union Square, New York.

Principal Domestic Branches.

ALBANY, N. Y.,	39 North Pearl Street.
ATLANTA, Ga.,	Corner Broad and Alabma Streets.
BOSTON, Mass.,	69 Hanover Street.
BUFFALO, N. Y.,	256 Main Street.
BALTIMORE, Md.,	13 North Charles Street.
CHICAGO, Ill.,	111 State Street.
CINCINNATI, Ohio,	61 West Fourth Street.
CHARLESTON, S. C.,	186 King Street.
CLEVELAND, Ohio,	350 Euclid Avenue.
DETROIT, Mich.,	191 Woodward Avenue.
HARTFORD, Ct.,	5 Allyn House Block,
INDIANAPOLIS, Ind.,	72 and 74 West Washington Street.
LOUISVILLE, Ky.,	164 Fourth Avenue.
MEMPHIS, Tenn.,	279 Main Street.
MILWAUKIE, Wis.,	101 Wisconsin Street.
NASHVILLE, Tenn.,	122 Church Street.
NEW ORLEANS, La.,	85 Canal Street.
NEW HAVEN, Ct.,	52 Orange Street.
NEWBURGH, N. Y.,	38 Water Street.
NEWARK, N. J.,	766 Broad Street.
PHILADELPHIA, Penn.,	1105 Chestnut Street.
PITTSBURGH, Penn.,	10 Sixth Street.
POUGHKEEPSIE, N. Y.,	396 Main Street.
RICHMOND, Va.,	821 Main Street.
ST. LOUIS, Mo.,	404 North Fifth Street.
ST. PAUL, Minn.,	19 East Third Street.
SAVANNAH, Ga.,	172 Broughton Street.
SAN FRANCISCO, Cal.,	118 Sutter Street.
TROY, N. Y.,	4½ Franklin Square.
UTICA, N. Y.,	15 Genesee Street.
WHEELING, W. Va.,	101 Market Street.

Principal Distributing Agencies.

BROOKLYN, N. Y.,	321 Fulton Street.
ELMIRA, N. Y.,	142 West Water Street.
ITHACA, N. Y.,	4 South Tioga Street.
JERSEY CITY, N. J.,	51 Montgomery Street.
PROVIDENCE, R. I.,	186 Westminister Street.
ROCHESTER, N. Y.,	43 State Street.
SYRACUSE, N. Y.,	48 South Salina Street.

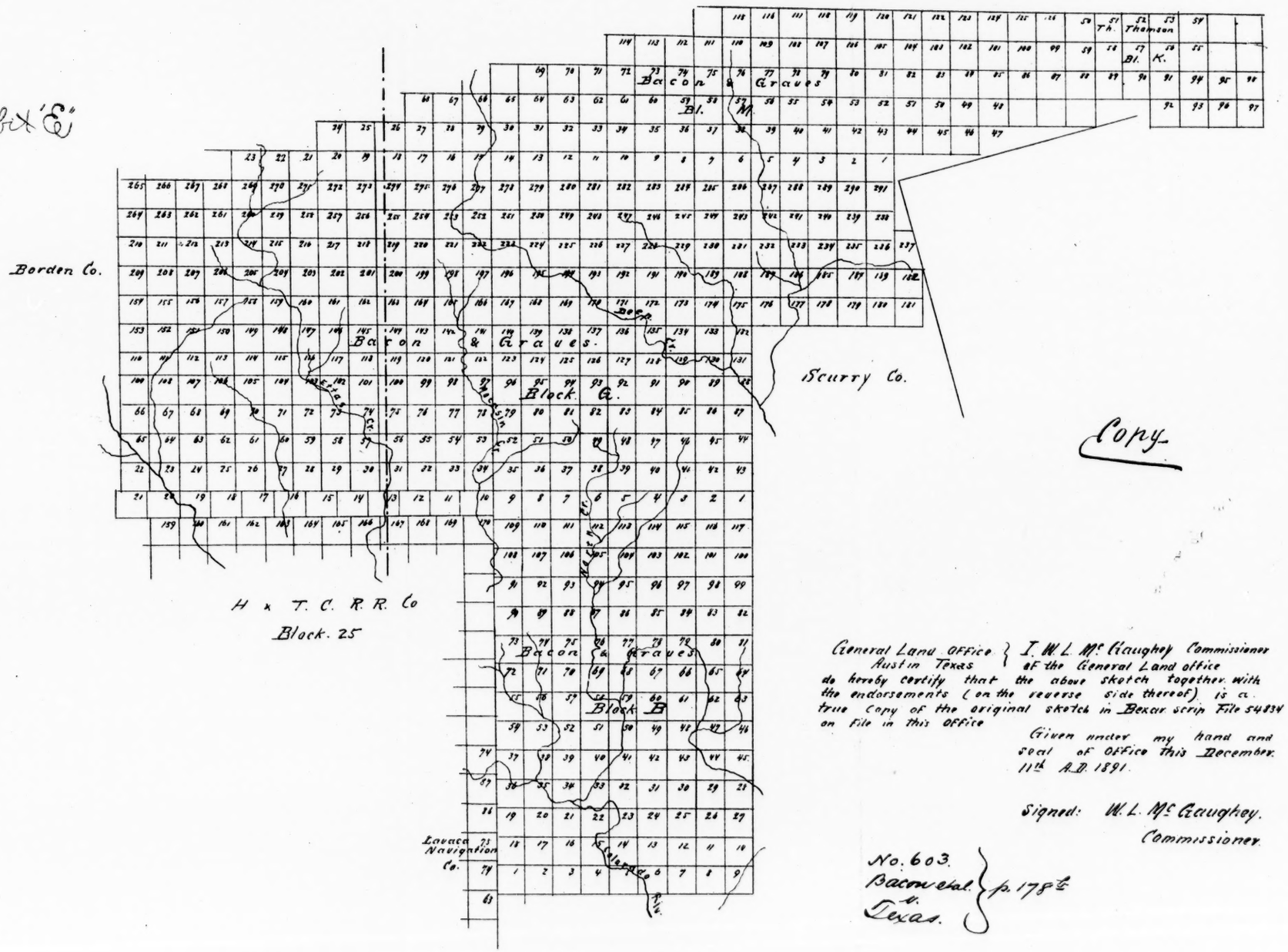
Principal Foreign Branches.

LONDON,	England,	147 Cheapside, E. C.
LIVERPOOL,	"	21 Bold Street.
MANCHESTER,	"	105 Market Street.
NEWCASTLE.	"	58 Northumberland Street.
LEEDS,	"	1 Commercial Street.
BRISTOL,	"	19 High Street.
SOUTH LONDON,	"	8 Newington Causeway.
DUBLIN, Ireland,		69 Grafton Street.
BELFAST,	"	7 Donegal Square.
GLASGOW, Scotland,		65 Buchanan Street.
ABERDEEN,	"	46 George Street.
DUNDEE,	"	49 Reform Street.
HAMBURG, Germany,		3 Neuerwall.
BERLIN,	"	37 Mohren Strasse.
BRESLAU,	"	34 Strauss.
BREMEN,	"	142 Frankfort
FRANKFORT,	"	10 Hammonia
ST. PETERSBURG, Russia,		
MADRID, Spain,		
PARIS, France,		94 Boulevard Sebastopol.
MELBOURNE, Australia,		Corner Bourke and Russell Streets.
VALPARAISO, South America,		Calle del Cabo, 115.
MONTEVIDIO,	"	
RIO DE JANEIRO,	"	103 Rua de Ouvidor.
HAVANA, Cuba,		Calle Obispo, 123.
MONTREAL, Canada East,		465 Notre Dame.
HAMILTON, Ontario,		64 King, Ea.
LONDON,	"	196 Dundas Street.
TORONTO,	"	22 Toronto Street.
BRANTFORD,	"	Market Square.
OTTAWA,	"	456 Sparks Street.

In addition to the above list we have in the United States about 1500 *authorized agencies,* 180 BRANCH OFFICES, *besides agencies in Great Britain and Ireland, and hundreds of repesentatives under control of our other Foreign Branches.*

U.S. Circuit Ct. S. Dist. Illinois
Singer Mfg Co
vs
June Mfg Co
In Chancery
Defendants Ex-
hibit Com-
plainants
Admitted Nov
1877.
Philip B. Sawyer
Notary Public

Exhibit "E"



Copy.

General Land Office } I. W. L. McCaughey Commissioner
Austin Texas } of the General Land office
do hereby certify that the above sketch together with the endorsements (on the reverse side thereof) is a true Copy of the original sketch in Bexar scrip File 54834 on file in this Office

Given under my hand and seal of Office this December 11th A.D. 1891.

Signed: W. L. McCaughey.
Commissioner.

No. 603.
Bacon et al.
v.
Texas.
} p. 178 Tr.

6

Houston and Texas Central Rail Way Companys Surveys.

Block № 97

Mt Converse

Mt Elgin

Colo. & Pike

H & T. C. R. R. Co

Bl. 2

Exhibit "B"

H. & T. C. Ry. Co

Bl. 25

Lavacca Navigation Co
Bl. 20

H. & T. C. Ry. Co
Bl. 26.

10 Miles

Northern Boundary Line of Memphis El Paso & Pacific Ry Reserve.

Center line S 70° W.

Y O U N G D I S T R I C T.

No 603.
Patented p. 198
Texas

I, W. L. McCaughey Commissioner of the General Land Office do hereby certify that the foregoing Sheets (together with the endorsements thereon) of Block 25 Houston & Texas Central Rail Road surveys, is a true copy of the original on file in this office

Given under my hand and seal of Office this 12th day of December A.D. 1891.

Signed. Wm Bramlette
Chief Clerk & acting Commissioner.

Filed in Office Dec. 20/73.

Signed: L. Klappenbach.
Draftsman

CARZA CO.

KENT COUNTY

Waco & N. W. Ry. Co's. Block No. 6

T. & N. O. Ry. Co's. Block No. 2

H. & T. C. Ry. Co

Brazos River

Double Mountain Fork

Clear Fork

Salt Fork

Duck Creek

Croton Creek

Mountain Creek

Bluff Creek

Ox Shire's Pasture

Montgomery and Ellis Pasture

A. J. Long's Pasture

Beals Pasture

Col Sloans Pasture

Moar's Pasture

Moars Pasture

Moars Ranch

Trammel's Pasture

Witten's Pasture

Pasture

Ewing

Beals

Moars

Block 2
T. & N. O. Ry. Co
and
Block 97
of
H. & T. C. Ry. Co
as
resurveyed by
Geo Spiller
State Surveyor
Scale: 2000 vs. t. the
Var. 9°21.

Var. 9°45E

H. & T. C. Rw. Co

Bl. 2

D. L. Rector

Original Corners Found.

I Geo Spiller State Surveyor do hereby Map this Block, being the resurvey of Surveys originally Surveyed by me by actual survey on the ground.

Signed Geo Spiller
State Surveyor

Block 2
T.& N. O. Ry Co
and
Block 97
of
H.& T. C. Ry. Co
as
resurveyed by
Geo Spiller
State Surveyor
Scale: 2000 vs. to the Inch.
Var 9°21.

D. Original Corners found.

I, Geo Spiller State Surveyor do hereby certify that the above sketch shows the true and correct position of corners represented thereon as determined by me by actual survey on the ground.

Signed Geo Spiller
State Surveyor

Var. 9°45E

Beals Pasture Col Sloans Pasture H & T. C. Ry. Co

Pasture Moars Pasture Moars Pasture Moars Pasture Pasture

Halloway & Pasture Pasture Pasture Pasture Parkins Pasture Pasture

Blume Pasture Trammel Pasture Ranch Pasture

Pasture Ewing Thos. Trammel's Pasture

SCURRY COUNTY

BORDEN CO.

Var. 9°45E

Blume Pasture Pasture Pasture